

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BEFORE THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE

JURY TRIAL DAY 3

February 17, 2015
9:22 a.m.

John J. Moakley United States Courthouse
Courtroom No. 18
One Courthouse Way
Boston, Massachusetts 02210

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INDEX

WITNESS:

PAGE :

3	PETER MANNING (cont.)	
	DIRECT EXAMINATION BY MR. DE LLANO	7
4	CROSS-EXAMINATION BY MS. PEACHY	11
	REDIRECT EXAMINATION BY MR. DE LLANO	28
5	CHRISTOPHER DIORIO	
	DIRECT EXAMINATION BY MR. DE LLANO	29
6	CROSS-EXAMINATION BY MS. PEACHY	40

* * * * *

EXHIBITS

10	NUMBER	PAGE
11	B (For identification)	18
12	5 (In evidence)	37
13		
14	Jury Verdict.....	Page 105

* * * * *

1 P R O C E E D I N G S

2 THE CLERK: United States District Court is now in
3 session. You may be seated.4 THE COURT: Good morning, counsel. I recognize and
5 the record should show that the defendant is not yet present in
6 the courtroom, though we have the jurors. This is in the
7 nature of the sidebar conference; so I thought I could proceed
8 and save time.9 After considerable reflection, I've decided to charge
09:23 10 on entrapment. That has the consequence of allowing the
11 government to put in their propensity evidence. And my intent
12 is to allow them to put in all the pictures from the computer,
13 including what you call anime, the cartoons, the sketches.14 And I guess I put it to defense counsel. I'm
15 responsible for my own rulings, but the way this case has gone
16 in, I have excluded them since I was not of the opinion that
17 propensity evidence was germane, but the defense appears to
18 want the entrapment to be charged to the jury. And on this
19 evidence, I believe it can be argued that the government
09:24 20 induced the conduct by -- I'm not saying this is the only
21 argument, but this is the one that persuades me -- that the
22 government induced the conduct by offering the imaginary mother
23 for dominant/submissive sex play as part of the deal to get the
24 imaginary daughter involved.

25 I draw no conclusions, but on the evidence, that could

1 be argued. That's inducement under the law.

2 So Ms. Peachy, I wanted to come out and say that now,
3 because the computer witness who authenticates all of these
4 things is on the stand; and if you're going to press
5 entrapment, which is your right, we're going to change the
6 ruling on, I believe it's Exhibit 6, to allow all the photos to
7 come in and then let you go from there and you should know
8 before either side rests.

9 MS. FISHER: Your Honor, I understand your ruling.

09:26 10 Obviously, we still do object. We filed a motion in limine on
11 this.

12 THE COURT: You did.

13 MS. FISHER: On the fact of those photos coming in,
14 because even if we are arguing predisposition, we don't think
15 those photos are evidence of predisposition.

16 THE COURT: I understand your position, but I
17 disagree. I do not think they are so inflammatory that under
18 403 they should be excluded.

19 MS. FISHER: I just want to make that objection for
09:26 20 the record.

21 THE COURT: You're rights are saved. So we're clear,
22 entrapment is in the case. So now the jury is all ready, just
23 as soon as we get Mr. Hinkel here, Exhibit 6 now is the entire
24 Exhibit 6, including the photographs?

25 MR. DE LLANO: Correct, your Honor; and we had

1 previously wrapped up with this witness. Would we be able to
2 resume this morning?

3 THE COURT: Doesn't it make more sense to resume this
4 morning in light of my ruling, then give the defense their
5 complete cross-examination?

6 MR. DE LLANO: That would be our preference.

7 THE COURT: All right. I think you should stand easy,
8 and we'll press to get Mr. Hinkel up here and get going.

9 MR. DE LLANO: Thank you, your Honor.

09:27 10 THE COURT: We're recessed.

11 (Recess taken 9:26 a.m. to 9:27 a.m.)

12 (Jury enters.)

13 THE CLERK: Court is back in session. You may be
14 seated.

15 THE COURT: Well, good morning, ladies and gentlemen.
16 I haven't got the words to thank you. You people got in here
17 before all the rest of us got in here. And in fact, we don't
18 have Mr. Romanow. He's stuck in Newton, so we have a wonderful
19 court reporter, Kelly, and we welcome her to this session of
09:38 20 the court. Thank you so very much.

21 And you may resume the stand. And if you'll remind
22 the witness.

23 THE CLERK: I'd like to remind you that you're still
24 under oath. Do you understand?

25 THE WITNESS: Yes.

1 THE COURT: We wrapped up, but I'm allowing the
2 government a few more questions of this witness, and then we'll
3 get to his cross-examination. Mr. De Llano, proceed.

4 MR. DE LLANO: Thank you, your Honor.

5 (PETER MANNING, previously sworn.)

6 DIRECT EXAMINATION BY MR. DE LLANO: (cont.)

7 Q. Good morning, Special Agent Manning.

8 When we left off last week, you described certain
9 photographs that you discovered on the electronic evidence that
09:39 10 you examined. In addition to those photographs, did you locate
11 any other images during your examination of the electronic
12 media?

13 A. I did.

14 Q. And can you please describe what --

15 A. Sure. In the process of looking for the images that we
16 exchanged during the investigation with Mr. Hinkel, we came
17 across some images of interest that needed further review.

18 Q. Do you have the exhibit binder in front of you? If I
19 could direct your attention to Exhibit 6, page 84.

09:40 20 A. Okay. I'm at page 84.

21 Q. The third image down, is that one of those images?

22 MS. PEACHY: I object, your Honor.

23 THE COURT: Overruled.

24 A. It is.

25 Q. Bring it into focus here. Can you please explain to us

1 the information underneath the image?

2 A. Sure. The first series of digits is the actual file name,
3 and then the following, the long string is the file path or the
4 location where you could find that file.

5 THE COURT: So let me stop you right there.

6 Q. The first side of characters and numbers it says Seagate
7 number 9IVY, just to remind the Court, what specific drive does
8 that signify?

9 A. Sure. That is the hard drive that came out of
09:40 10 Mr. Hinkel's work computer.

11 Q. So if you could continue, partition 3, what does that
12 mean?

13 A. Sure. So as before, hard drives can be broken down to
14 different sections or partitions. This one is partition 3. OS
15 stands for the operating system, and the file, TFS, is the type
16 of file system. The root is the very beginning of that drive.
17 And if you follow that whole path out, you'll see that that
18 file ended up in a cache folder for Mozilla Firefox, which is a
19 browser for the internet.

09:41 20 Q. And I know we went over it last week, but if you could
21 remind us what it means, what a cache folder is?

22 A. Sure. When a user browses the internet, the software
23 developers use the cash directory to speed up the browsing
24 process. So images and other files that may be reviewed again
25 at the same time or same session are put into a cache folder so

1 they can be recalled quickly instead of back over the internet
2 like they were originally.

3 Q. If you could turn to the next page, page 8, of Exhibit 6.
4 Two images that appear on this page, where are those located?

5 A. Again, same hard drive, Mr. Hinkel's work computer. If
6 you follow the path, you can see the user name there after old
7 drive, it has Paul H. Archambault; and if you keep following
8 the path out, that cache ends up back in the Mozilla Firefox
9 directory.

09:42 10 Q. And once again, what is Mozilla Firefox?

11 A. It's a browser that the user can use to access data over
12 the internet.

13 Q. Finally, page 86 of the report, these two images, can you
14 describe -- were those located in the same location?

15 A. In general, yes. They came into the cache directory,
16 Mozilla Firefox, same hard drive for both of them, yes.

17 Q. In addition to these images, were there any other images
18 discovered in your review or examination of this computer?

19 A. Yes, we found some images of Mr. Hinkel, what appeared to
09:43 20 look like he was using some of the items that we had recovered
21 on the day of his arrest.

22 Q. Can I direct your attention to page 67 of that report.
23 I'm not going to go through all of images, but was this one of
24 the images that was discovered?

25 MS. PEACHY: I object, your Honor.

1 THE COURT: Overruled.

2 A. Yes, it was.

3 Q. Could you please tell us where that image was located?

4 A. Sure. It's back on -- it's on Mr. Hinkel's work computer.

5 This one was found in the recycle bin.

6 Q. And what does it mean to be in the recycle bin?

7 A. The user has chosen to delete the file, but it's not

8 actually deleted. It's just placed into a directory that will
9 eventually be deleted.

09:44 10 Q. Special Agent Manning, there are several pages of
11 pictures. Will you please flip through pages 67 through 82 of
12 your report and let us know where those images were located.

13 A. All but one came from Mr. Hinkel's work computer, in the
14 recycle bin.

15 Q. And the other one that did not?

16 A. On page 82, the second image came from Mr. Hinkel's work
17 computer, but it came from a temporary internet file directory.

18 Q. And what is a temporary internet file directory?

19 A. Works the same way as a cache would for a browser. The
09:45 20 file would be placed in that directory so it could be recalled
21 easier during Windows Explorer or Internet Explorer viewing
22 situation.

23 MR. DE LLANO: No further questions, your Honor.

24 | THE COURT: Ms. Peachy.

25

1 CROSS-EXAMINATION BY MS. PEACHY:

2 Q. Good morning, Agent Manning.

3 A. Good morning, counsel.

4 Q. Just because it's been a few days, I want to go through,
5 again, all of the items that you examined in relation to this
6 case; I believe those are listed on the second page of your
7 report, correct?

8 A. Yes.

9 Q. So you examined an Acer computer. That's a regular hard
09:46 10 drive, correct?

11 A. The Acer is the actual laptop.

12 Q. That was a laptop computer?

13 A. I believe so.

14 Q. A Hitachi. What was that, a hard drive?

15 A. That's a hard drive, yes.

16 Q. A max store, what was that, a flash drive?

17 A. I believe it was an old hard drive.

18 Q. That's also a hard drive. Two Seagate computers?

19 A. Both hard drives.

09:47 20 Q. Both hard drives. 3C. So one, two, three, four, five,
21 six computers you examined in this case, correct?

22 A. In this report, yes.

23 Q. Okay. Did you examine other computers?

24 A. We did a quick preview of some of the other items, I
25 believe, that were detailed that were returned to Mr. Hinkel.

1 Q. So in addition to six computers that you looked through,
2 you also looked through some other items, correct?

3 A. That's right.

4 Q. And you also, I think you looked through his phone, right?

5 A. No. We didn't have a chance to look through his phone.

6 Q. But there were some other digital or electronic devices
7 that you looked through in addition to these six computers,
8 correct?

9 A. That's correct.

09:48 10 Q. And this report that's now marked as -- that's now in
11 evidence as Exhibit 6, this is actually a summary of your
12 findings that you prepared for the prosecution, correct?

13 A. That's correct.

14 Q. It's not everything that you found on these six computers,
15 right?

16 A. That's right.

17 Q. And you did, in fact, do a more complete -- well, at least
18 a longer report with all of your findings, correct?

19 A. During -- when we did a preliminary report, there is
09:48 20 provided a section of basically thousands of pages that were
21 not -- no sense of printing all those out -- but it was a long
22 listing of certain types of files, internet history, that
23 didn't make it into this report, that's correct.

24 Q. And that longer report was over 26,000 pages long, just so
25 we're talking about the same thing, right? Does that sound

1 about right?

2 A. I wouldn't really call it a report. It's more of what the
3 software itself would produce. It just gives a raw dump of
4 data. And it's my job to go through and find out what would be
5 relevant for the report itself.

6 Q. What would be relevant for the prosecution, correct? What
7 you're going to put in your report, right?

8 A. Correct.

9 Q. And that's the report that you put together that's Exhibit
09:49 10 6, right?

11 A. Sure.

12 Q. You pulled out pieces that you thought would help the
13 prosecution and put that into the report that's now Exhibit 6,
14 right?

15 A. Everything that I thought was relevant to the
16 investigation made it into this report.

17 Q. Okay. And that longer report -- or I won't call it a
18 report. That longer data retrieval -- I don't know what else
19 to call it -- that included, you said, internet history, right?

09:50 20 A. That's correct.

21 Q. Images, correct?

22 A. I believe so.

23 Q. Some that are not in the report, right?

24 A. Mm-hmm.

25 Q. Some that aren't in Exhibit 6, right?

1 A. That's right.

2 Q. Some chats, right --

3 A. Sure, yeah.

4 Q. -- like instant messaging chats, right, you found?

5 So I want to talk about a chat that you found. One thing
6 you found were some Yahoo Messenger chats, right; is that
7 right?

8 A. That's correct.

9 Q. Okay. And that's an instant messaging program, right?

09:50 10 A. That is, yes.

11 Q. Okay. I think -- well, hopefully people understand what
12 that is.

13 Okay. And you found one where Mr. Hinkel is using the
14 name "funtoday07," correct?

15 A. Yes.

16 MS. PEACHY: May I approach, your Honor?

17 THE COURT: You may.

18 Q. I'm showing you a document there.

19 A. Thank you.

09:51 20 Q. Can you look at it and just tell me if you recognize what
21 it is.

22 A. (Witness reviews document) So one of the software that we
23 use is called Internet Evidence Finder, and this is
24 basically -- again, I wouldn't call it a report because it's
25 not something I prepared, but it's a raw data dump from that

1 software that I included in the preliminary.

2 Q. And this particular data dump is a data dump of all of the
3 Yahoo chats that you found on Mr. Hinkel's computer, correct?

4 A. I couldn't say if it was all of them, but it's what we
5 could recover.

6 Q. Okay. And these were found on the Acer laptop, correct?

7 A. Yes.

8 MS. PEACHY: Okay. Your Honor, at this point I'd move
9 to introduce that report as Defendant's Exhibit A.

09:52 10 THE COURT: Well, there isn't a "Defendant's Exhibit."
11 They're just exhibits. Any objection to that?

12 MR. DE LLANO: Your Honor, may I we approach the
13 sidebar?

14 THE COURT: You may.

15 **SIDE BAR:**

16 MR. DE LLANO: Your Honor, the reason that I've asked
17 for the sidebar is because I believe the defense is attempting
18 to show that or use, I assume, an argument that specific
19 instance where he said, "I would not play with my children" as
09:53 20 evidence that he didn't do it this time.

21 THE COURT: I guess I don't understand what the --

22 MS. FISHER: There are two reasons.

23 THE COURT: Why don't we want this?

24 MS. FISHER: Well, there are two reasons. Number one
25 is that an excerpt of this chat is actually in their Exhibit 6,

1 but it doesn't make clear who is which person; and they, as
2 your Honor may recall, use this as an example before they
3 figured out who was who.

4 MR. DE LLANO: Just on that point --

5 THE COURT: Wait a minute. Let me just stick with
6 her.

7 MS. FISHER: In their 404(b) initial letter, they used
8 this as an example before we figured out who was who that he
9 had asked the other user, "Have you ever played with your
09:54 10 children," when in fact it's the other user saying it to him;
11 and the excerpt of this that is in Exhibit 6 does not make
12 clear who the users are.

13 THE COURT: Now, wait a minute. Let me say it back to
14 you. In evidence already now is Hinkel talking about somebody
15 else all other than the agents, right?

16 MS. FISHER: Talking with a person other than the
17 agents, an adult, an adult.

18 THE COURT: That's right, right? An adult, other than
19 the agents.

09:54 20 MS. FISHER: Right. Where the adult, the other
21 person, asks Hinkel, "Have you ever wanted to play with your
22 children," and he said, "No."

23 THE COURT: You said that's in evidence already.

24 MS. FISHER: No, but it doesn't make it clear that
25 Hinkel is the one saying no.

1 THE COURT: All right. In that excerpt, the other
2 person says, "Have you ever played with your children?" Hinkel
3 says, "No," right?

4 MS. FISHER: The excerpt that's in evidence doesn't
5 make it clear who is saying no and who is asking.

6 THE COURT: Well, the excerpt may not, but there's no
7 dispute about that. That's how the government presented it.

8 MR. DE LLANO: During the pretrial motion.

9 THE COURT: Forget pretrial. What these people have
09:55 10 heard, these people have heard about a conversation in which
11 somebody else says to Hinkel, "Have you ever played with your
12 children," and Hinkel says, "No."

13 MS. PEACHY: No, that's not in evidence.

14 MR. DE LLANO: We took that out, and we have not --
15 it's not in evidence and they have not heard anything about
16 that.

17 THE COURT: None of that?

18 MR. DE LLANO: Correct.

19 MS. PIEMONTE-STACEY: Right.

09:55 20 THE COURT: So now you --

21 MS. FISHER: I apologize.

22 THE COURT: That's all right. We're sorting it out.
23 So you want to put it in that on another occasion to another
24 person Hinkel said, the point asked, "Do you play with your
25 children," and he says, "I don't."

1 MS. FISHER: He says, "I would never do that," not
2 only that it's evidence that he solicited --

3 THE COURT: That's his own children?

4 MS. FISHER: Yes, but, your Honor, in the chats that
5 are already in evidence, with the mother, he says, "I once
6 solicited this type of scenario, but to be honest, I asked for
7 someone who was of legal age."

8 THE COURT: Yes, I recall it.

9 MS. FISHER: It does appear that the person talking to
09:56 10 him is answering that, and he says, "And how old are you?" She
11 says, "I'm 41," and he says, "You could still be my girl." So
12 we're saying, this is not evidence, this is evidence of his
13 lack of predisposition.

14 THE COURT: I don't think it is. On relevance
15 grounds, it's excluded.

16 MR. DE LLANO: Thank you, your Honor.

17 (End sidebar.)

18 THE COURT: Now, just so we're clear, since I didn't
19 admit that in evidence, that we will give a letter, and the
09:57 20 letter will be Exhibit A for identification.

21 MS. PIEMONTE-STACEY: Thank you, your Honor.

22 THE COURT: The numbered ones will all be in the jury
23 room. We already have an A. It will be Exhibit B for
24 identification.

25 (Exhibit B marked for identification)

1 BY MS. PEACHY:

2 Q. Agent Manning, in those chats that you recovered off the
3 computer, you never found any evidence that Mr. Hinkel was
4 communicating with minors, correct?

5 A. Not that we can tell. I mean, the chats are what they
6 are. They're just words on a page.

7 Q. Right. Okay. And you also showed the jury last time we
8 were in court the fragments of the e-mails that you recovered
9 on Mr. Hinkel's work computer. Do you recall that?

09:58 10 A. That's correct.

11 Q. And you were able to retrieve fragments of the e-mails
12 that he was having with the undercover agent, right?

13 A. That's right.

14 Q. And you recovered those by searching for those e-mail
15 addresses?

16 A. That's right.

17 Q. But when you recovered those fragments, you also recovered
18 fragments of other e-mails, correct?

19 A. That's correct, if an e-mail is checked in a browser and
09:58 20 the fragments come from un allocated part of a drive or a page
21 file that's more of a temporary file, it can be adjacent to
22 other data, other e-mails.

23 Q. So you pick up contents of other e-mails with other
24 people, correct?

25 A. That's correct.

1 Q. And fair to say that some of the other fragments that you
2 picked up were sexual conversations that Mr. Hinkel was having
3 with other people, correct?

4 A. Appeared to be, yes.

5 Q. Okay. For example -- can I have the Elmo? Thank you.

6 I think this is, if my page numbers are the same as your
7 page numbers, this is page 13. You can see there in the middle
8 of the page an e-mail address that starts "bam," correct?

9 A. Yes, I do.

09:59 10 Q. And then there's a little fragment here. "Yes, sir.

11 Sorry, sir. It will happen again," correct?

12 A. I see that, yes.

13 Q. Okay. And down at the bottom of the page there's
14 another -- appears to be another e-mail fragment with that bam
15 e-mail address, right?

16 A. Yes, I see that.

17 Q. That starts, "Meow," correct?

18 A. That's correct.

19 Q. On the next page, another e-mail fragment picked up with
10:00 20 this bam. It says, "Master," correct?

21 A. Yes, I see that.

22 Q. Okay. And then further along on the page -- again,
23 hopefully my page numbers are correct -- on page 17, there are
24 some e-mail fragments with another e-mail address at the bottom
25 of the page there, "Sweet mistress for you," correct?

1 A. Yes.

2 Q. It goes on to the top of the next page. "Tell me, Daddy,"
3 correct? That's part of that e-mail fragment, correct?

4 A. It appears to be, yes.

5 Q. And on page 28, another e-mail fragment with the, "Sweet
6 mistress for you," it says, "Daddy dom too busy for attention."
7 Do you see that?

8 A. I do.

9 Q. And there are some other e-mail fragments with other
10:01 10 e-mail addresses of a similar nature, correct, that were picked
11 up here --

12 A. Yes.

13 Q. -- contained in Exhibit 6, correct?

14 A. Correct.

15 Q. And none of those e-mails, none of those other e-mail
16 fragments that you picked up mentioned children, correct?

17 A. I don't believe so.

18 Q. Okay. Or wanting to have sex with children, correct?

19 A. That's correct.

10:02 20 Q. Okay. And you also talked about how part of your
21 examination of these six computers involved looking at website
22 history, correct?

23 A. That's correct.

24 Q. On all six computers, right?

25 A. Yes.

1 Q. And it's fair to say you found evidence, you found web
2 history of adult pornography websites being visited. Do you
3 recall that?

4 A. I do.

5 Q. Quite a few, correct, different adult pornography websites
6 being visited, correct, histories?

7 A. That's correct.

8 Q. Correct?

9 A. That's correct.

10:03 10 Q. Do you recall about how many websites it was?

11 A. A lot. I don't recall how many, no.

12 Q. And you found images of adult pornography, correct?

13 A. Correct.

14 Q. A lot, again?

15 A. A lot.

16 Q. Okay. But again, that's not included in your prosecution
17 summary in Exhibit 6, correct?

18 A. It wasn't -- it's not -- it wasn't part -- it's not a
19 criminal act. There's nothing criminal about looking at adult
10:03 20 pornography.

21 THE COURT: Keep your voice up. It's not a criminal
22 act, and what did you say?

23 A. It's not a crime to look at adult pornography.

24 Q. Right. In all of that web history, you didn't find any
25 evidence on any of the six computers of Mr. Hinkel visiting any

1 child pornography websites, correct?

2 A. Well, we went through it and saw some of the animae
3 earlier, some of the images.

4 Q. But you don't know what website those came from, correct?

5 A. That's correct.

6 Q. And one thing you were looking for specifically in the
7 website history --

8 A. Mm-hmm.

9 Q. -- is whether he's visited any child pornography websites,
10:04 10 right?

11 A. That's right.

12 Q. And he hadn't, correct?

13 A. Not that we could find.

14 Q. Not in any of the six computers that you looked at, right?

15 A. That's right.

16 Q. Not even any websites about pedophilia or where you might
17 go to meet children or talk to children, correct; nothing like
18 that?

19 A. No.

10:04 20 Q. And you mentioned these animae pictures and the fact that
21 they were found in a web cache file, right?

22 A. That's right.

23 Q. All -- I forget how many -- four of them or whatever, five
24 of them, were found in the Firefox web cache file, right?

25 A. That's right.

1 Q. And as I just said, you have no idea what website they
2 came from, right?

3 A. I don't.

4 Q. And in fact, when you looked at the web history, there was
5 no evidence of any child pornography-type websites being
6 visited, correct?

7 A. That's right.

8 Q. So they could have come from a website that had adult
9 pornography on it?

10:05 10 MR. DE LLANO: Objection. Speculative.

11 THE COURT: Would you ask the question again? That's
12 my fault.

13 Q. So those images could have come from a website that had
14 adult pornography on it?

15 THE COURT: Well, do you know?

16 THE WITNESS: I don't know what site they came from.

17 THE COURT: Well, that's his answer.

18 Q. Okay. You just don't know what website they came from.
19 You don't know when that website might have been visited,
10:05 20 correct?

21 A. I don't.

22 Q. You don't know, even though they were found on
23 Mr. Hinkel's work computer, you don't know who had access to
24 his work computer or who used his work computer, correct?

25 A. That's true.

1 Q. Especially because you can't even narrow down when those
2 images were put into the cache file, correct?

3 A. That's correct.

4 Q. And when an image shows up in a web cache file, that is
5 without the user ever doing anything, right, except being on a
6 website that has that image on it?

7 A. Well, the user navigates to that page and views the actual
8 page, and that's how the files end up in the cache.

9 Q. Okay. But they don't have to save the image, right?

10:06 10 A. It's not a conscious decision to save a file into the
11 cache directory, no.

12 Q. So somehow you are on a website; and you don't know, for
13 example, if whoever is looking at this website that has these
14 images there gets there by accident or on purpose, right?

15 A. No, you can't tell that.

16 Q. You can't recreate the path that they took to get to that
17 image, right?

18 A. I'm sorry. Path?

19 Q. You can't like the -- what websites they clicked on to get
10:06 20 to that image, you can't recreate that, right?

21 A. No.

22 Q. And once they're on that web page and, again, we don't
23 even know what web page this is, so we don't know what other
24 images there may be on that page, right? I'm sorry, you have
25 to say --

1 A. Correct. Yes, sure.

2 Q. It just automatically puts a file into the web cache
3 without the viewer doing anything, right?

4 A. It's part of the process for the browser to download data.

5 Q. But you don't do anything; you're just visiting this
6 website, and the image automatically goes into the cache file
7 without the user doing anything?

8 A. I guess I disagree with the user not doing anything
9 because they navigate to that page, and just part of the
10:07 10 process of the browser itself is to actually download those
11 images from the internet.

12 THE COURT: Now, in this instance, it's perfectly
13 appropriate for her to ask questions that suggest things. "You
14 were wearing a red hat, weren't you?" That's how you can
15 question a witness on cross-examination. But the evidence is
16 what the witness says. If the witness says something else,
17 then, like any witness, it's up to you whether you believe it,
18 disbelieve it, believe parts of it, but that's the evidence,
19 not what the questions may suggest.

10:07 20 Go ahead, Ms. Peachy.

21 Q. You keep saying the word "navigate to the page," but
22 again, you don't know if it was -- you don't know who got to
23 that page, who was looking at that page, right?

24 A. No.

25 Q. And you don't know, again, what if there was a path, a

1 deliberate path taken to get to that page, correct?

2 A. I guess I use "navigate" in the general term because the
3 user is actually using that browser to view what that content
4 is on that page. So maybe navigate is a bad term for it. But
5 using the browser to view that content, that now appears in the
6 cache folder.

7 Q. And when you're examining all of these six computers,
8 you're obviously looking for any images of child pornography,
9 correct?

10:08 10 A. Not directly. I mean, our job was to look for evidence of
11 the crime. And as part of that, we're looking for all images
12 related to the investigation that could include child
13 pornography. We're always keeping our eye open for it. But
14 for this instance, I was mainly looking for images involved in
15 the investigation exchanged between Mr. Hinkel and the
16 undercover, or other images involved in the investigation.

17 Q. Okay. So when you're looking at these six hard drives and
18 you're kind of casually looking to see if any child pornography
19 pops up, on all six computers, there are no images of child
10:09 20 pornography found?

21 A. Not that I recall.

22 Q. Correct?

23 A. Nope.

24 Q. Not in the web cache file, not anywhere, correct?

25 A. No.

1 MS. PEACHY: I have nothing further.

2 THE COURT: Any redirect?

3 MR. DE LLANO: Briefly, your Honor.

4 REDIRECT EXAMINATION BY MR. DE LLANO:

5 Q. Special Agent Manning, you testified during
6 cross-examination that you didn't have a chance to look at --

7 THE COURT: I didn't hear. Keep your voice up.

8 MR. DE LLANO: I apologize.

9 Q. You testified during cross-examination that you didn't
10:10 10 have a chance to look at the defendant's phone. Why not?

11 A. That's correct. As part of the investigation, we would
12 definitely do a forensic analysis on a cellphone. Mr. Hinkel
13 provided us with a pass code for his phone the day of his
14 arrest. It was unlocked at the time of his arrest. However,
15 when we got back for analysis, the pass code was incorrect and
16 wouldn't unlock the phone. And because of some of the setup
17 for the phone itself and the way it was configured, we were
18 unable to do a forensic, full forensic analysis on the phone
19 itself.

10:10 20 Q. Now, turning to the discussion about cache, if you could
21 please turn to page 86 of Exhibit 6.

22 A. 86.

23 Q. What was the hard drive this was found on?

24 A. Which image? I'm sorry.

25 Q. Either one.

1 MS. PEACHY: Objection, your Honor. This has already
2 been asked.

3 THE COURT: It has been, asked and answered.

4 Q. All right. Is there a user identified in that string of
5 characters underneath the images?

6 A. Yes. As I was explaining about the path, it starts with
7 the hard drive; and you can see as you progress through, the
8 user is Paul.h@archambault.

9 MR. DE LLANO: No further questions.

10:11 10 THE COURT: Anything further for this witness?

11 MS. PEACHY: No, thank you, your Honor.

12 THE COURT: You may step down. Thank you. Is that
13 the government's case?

14 MR. DE LLANO: The government calls Christopher
15 Diorio.

16 (CHRISTOPHER DIORIO, sworn)

17 DIRECT EXAMINATION BY MR. DE LLANO:

18 Q. Good morning, sir. Would you please state and spell your
19 last name for the Court.

20 A. Yes. It's Christopher Diorio, D-i-o-r-i-o.

21 Q. Sir, are you currently employed?

22 A. I'm a special agent with the Department of Homeland
23 Security, Homeland Security Investigations.

24 Q. Are you assigned to any particular group or division
25 within Homeland Security Investigations?

1 A. Yes, I am. I am assigned to the child exploitation/cyber
2 crimes group.

3 Q. How long have you worked for the Department of Homeland
4 Security?

5 A. For approximately 13 years.

6 Q. Prior to working as a special agent with HSI, how were you
7 employed?

8 A. I was assigned to the United States Coast Guard tactical
9 law enforcement team that specialized in international
10:13 10 narcotics.

11 Q. Would you please describe generally what your duties and
12 responsibilities are as a special agent with Homeland Security
13 Investigations?

14 A. Yes. We're charged with investigating complex criminal
15 organizations and dismantling said organizations.

16 Q. Sir, were you involved in the investigation that led to
17 the charges against the defendant?

18 A. Yes, I was.

19 Q. Would you please describe what your involvement was.

10:13 20 A. I was aware of the investigation from its start, but I
21 didn't participate in the investigative aspect of the case. I
22 was brought in more specifically towards the end of the
23 investigation to help with the planning of the actual meet
24 between our undercover officer and the target.

25 Q. Were you involved on March 19, 2014?

1 A. Yes, I was.

2 Q. And what were your duties on that day?

3 A. As part of that planning and part of the execution of the
4 actual meet with the undercover agent and the target, I was set
5 up in the parking lot outside of an apartment complex in
6 Watertown, Massachusetts.

7 Specifically, my job or my role was to be inside of what
8 we call the cover vehicle. I was in the back of a minivan with
9 several other agents, and our job was to both maintain and
10:14 10 eyeball a visual of the target as he arrived at the location
11 and be available in case something went wrong to provide cover
12 for the undercover agent if something did, in fact, go wrong.

13 Q. What time did you arrive at that parking lot,
14 approximately?

15 A. Earlier that morning. I'd say 9:00, maybe 8:30.

16 Q. Could you please describe what, if anything, you observed
17 that morning?

18 A. Yes. We arrived at the parking lot and we parked sort of
19 towards the back so that we could see the entrance into the
20 parking lot. I was, as I mentioned, in the minivan but not
21 driving. We were listening to the surveillance of the target
22 from our aircraft and from our other units on the ground,
23 surveillance units. So we were aware of roughly, if not very
24 specifically, where he was at any given time as he was
25 approaching our location. As I mentioned, this was our job, so

1 as he pulled closer and pulled up onto a street just outside
2 the apartment complex, he parked his vehicle just outside. And
3 as I heard on the radio that that was happening, I instructed
4 the person driving the van to go ahead and pull out of our spot
5 and move to a position much closer to the door so that we could
6 get a visual on the truck that the target was driving as well
7 as the door and be closer if we were needed.

8 Q. And did you get a visual?

9 A. Yes, I did.

10:16 10 Q. At what point did you arrive at that vehicle?

11 A. Sure. So as soon as I instructed the person who was
12 driving the van to pull up towards the entrance, then we kind
13 of came around a little bit of a corner and I was able to see
14 the back of a truck. At that point, I saw the defendant near
15 the back of his truck and coming around towards the sidewalk to
16 head towards the apartment door, the outer apartment door that
17 we expected him to go into.

18 Q. Is the person that you saw that morning in the courtroom
19 today?

20 A. Yes, he is.

21 Q. Would you please point that person out and describe what
22 they're wearing.

23 A. Yes. He's the defendant. He's in a suit wearing a tie at
24 the defendant's table.

25 MR. DE LLANO: May the record reflect the witness has

1 identified the defendant?

2 THE COURT: It may.

3 Q. So Agent Diorio, what, if anything, did you observe after
4 you saw the defendant leaving his vehicle or walking away from
5 his vehicle?

6 A. As he walked away from his vehicle and up the sidewalk
7 towards the outer apartment door, I just noted what the
8 defendant was wearing, which I was already aware of based on
9 the earlier surveillance and was able to confirm it; and I also
10 noticed the defendant was carrying some sort of shoulder bag or
11 backpack or something as he walked into, as I mentioned, the
12 outer door of the apartment complex.

13 Q. At that point, what, if anything, did you do?

14 A. As he walked into the outer door of the apartment complex,
15 there were other agents on the inside. Once the defendant was
16 taken into custody, we, as I mentioned, were very close to the
17 door. And when we realized that we weren't needed, we parked
18 the minivan in a parking spot closest to the door, and I exited
19 the van at that point.

20 I instructed a few of the surveillance agents and the
21 current team that were with me to secure the defendant's
22 vehicle. By "secure," I mean pretty much stand around it to
23 make sure that nothing changes or nothing happens to it. Then
24 I went into the apartment where the defendant was taken into
25 custody.

1 Q. And when you arrived inside the apartment, what happened?

2 A. By that point, the defendant was already in a separate
3 room, I believe it was a bedroom, but there was no bed or
4 furniture really in it, and was speaking to the two lead
5 investigators at that point.

6 Q. And what did you do?

7 A. When there was a sort of a logical break in their
8 conversation, I told them that we had the car secured and that
9 if we -- if there was going to be consent to search the car,
10:18 10 they could just let me know. Ultimately, they did do that.
11 They had the defendant sign a consent form, which they provided
12 to me along with the keys for the vehicle. I took that consent
13 form and the keys and went out to the vehicle and instructed
14 the agents that had been previously securing the vehicle to go
15 ahead and begin searching it.

16 Q. Had you personally searched the truck?

17 A. I was there and watched and looked into the truck as it
18 went. But as far as actually taking things out of the truck,
19 no. It was the other agents that were standing around that I
10:19 20 instructed who searched it.

21 Q. Okay. So how did you obtain access to the inside of the
22 truck?

23 A. The keys were provided to us by the case agent along with
24 the consent form.

25 Q. Do any of these keys access all areas of the truck?

1 A. No, they did not.

2 Q. What area was not accessible through those keys?

3 A. As we searched the truck, we became aware of a lockbox in
4 the bed of the pickup truck that was locked, in fact. And none
5 of the keys on the key ring provided to us opened that lock
6 box.

7 Q. So what did you do at that point?

8 A. At that point I walked back into the apartment, informed
9 the case agents again. And I heard them go into the room and
10:19 10 they asked the defendant about the lockbox and the keys for the
11 lockbox. And I heard the defendant's reply direct, which was
12 that the keys were placed in the back seat under a mat in the
13 back portion of the cab.

14 The case agents then came out and told me that, but I had
15 heard it direct as well. I went outside, went directly to that
16 spot that the defendant had mentioned to us, and there were the
17 keys that opened up the lockbox.

18 Q. And were you able to open that lockbox?

19 A. Yes, we were.

10:20 20 Q. And what, if anything, did you find inside that lockbox?

21 A. We found several items in there, to include sex toys, and
22 we found a wig, a lot of camera equipment. Some other things
23 you would expect to see in a lockbox, such as like jacks and
24 tools and stuff to that effect.

25 Q. What did you do with the items that you found?

1 A. Well, we pulled the items out of the box. We looked
2 through. Had some plastic bags in there. We looked through
3 the items; and anything that we deemed relevant towards our
4 child exploitation investigation, we took into custody and we
5 seized.

6 MR. DE LLANO: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. Special Agent Diorio, I'm handing you what has been marked
9 for identification purposes only as Exhibit 5. Do you
10:21 10 recognize Exhibit 5?

11 A. Yes, I do.

12 Q. And what do you recognize it to be?

13 A. These are the three bags that were filled with -- three of
14 the bags that were filled with items that we seized from the
15 defendant's pickup truck that day.

16 Q. How do you know that those are the same bags?

17 A. Well, as I look at the bags here, I can see that they have
18 names, dates. Two of the bags have exactly what's in them, and
19 it has the names of the people, the two officers that I
20 instructed to search the vehicle written right on the bags.

21 Also has a case number that I know reflects this particular
22 investigation.

23 Q. And do you recognize the contents of those bags?

24 A. Yes, I do.

25 Q. And are they in the substantially same condition they were

1 on March 19, 2014?

2 A. Yes, they are.

3 MR. DE LLANO: Your Honor, at this point I ask that
4 Government Exhibit 5 be entered into evidence.

5 THE COURT: Any objection?

6 MS. PEACHY: Yes, your Honor, pursuant to my motion.

7 THE COURT: Yes. Your rights are saved. Overruled.

8 The items may be admitted. Exhibit 5 is now in evidence.

9 (Exhibit 5 received in evidence)

10:23 10 Q. Mr. Diorio, would you please identify the items that were
11 recovered from the defendant's toolbox?

12 A. Yes. This first bag appears to be or is a bag of sex
13 toys, to include three, possibly four, phallic toys and one
14 sort of baster-type device.

15 Q. Anything else?

16 A. Yeah. The other bag has like a pink tutu sized to fit
17 children three and up, along with several pairs of underwear,
18 to include -- most of them are princess-themed underwear, all
19 with sizes around -- they all appear to be size 8. And again,
10:24 20 there's one, two, three, four, five, six, seven pairs of
21 princess underwear size 8.

22 There's other articles of clothing here that appear to be
23 women's articles of clothing, size large, 10 and 10/12, some
24 bathing suits, underwear in here. This bag has the wig that I
25 referenced earlier, along with a strap; this actually appears

1 to go with one of the sex toys that I mentioned earlier. I
2 think they go as a set, from looking at them. Pantyhose, some
3 wipes and makeup. There's also some paperclips, two of them,
4 that we seized from the bag.

5 THE COURT: The way you identify those things is from
6 recognizing them and seeing the nomenclature on the bags. Have
7 I got it right?

8 THE WITNESS: That's correct, your Honor.

9 THE COURT: Why don't you put them back in the bags
10:25 10 that you brought them or that were given to you on the stand
11 rather than putting them all together. And then as you fill
12 the bag with what was in it, as it was brought to you on the
13 stand, let's let the clerk collect it. All right?

14 THE WITNESS: Absolutely, your Honor. I kind of kept
15 them separate so that would be easier.

16 THE COURT: I'm telling you that so the jury can have
17 them in the manner that they were handed to you. That's all.
18 Let me see that first bag for a moment.

19 You're done with the identifications?

10:26 20 MR. DE LLANO: I'm done.

21 THE COURT: Come to the sidebar.

22 **SIDE BAR:**

23 THE COURT: I just have a practical problem. The
24 defense's rights are saved. So he's given three bags. He
25 identifies what's in them. What's in them is the evidence.

1 This, for example, description is not evidence. And so I have
2 problems, unless you're not going to object, sending this back
3 to the jury. Now, we could do it -- well, do you object?

4 MS. PEACHY: I would prefer if perhaps we could just
5 put Exhibit 5 into a box that doesn't have any labeling.

6 THE COURT: I'd just as soon keep them in the three
7 bags as the government handed them to him.

8 MS. PEACHY: Sure.

9 THE COURT: Because I think that might make the record
10:27 10 better. Why don't we do this. Why don't we get three blank
11 bags. By "blank bags," I mean like shopping bags, not Homeland
12 Security bags. You take the exhibits from one bag, under the
13 clerk's supervision, and put it in an unmarked bag and saving
14 the defendant's rights against my initial rule, that's how
15 we'll handle it.

16 MS. PEACHY: Thank you, your Honor.

17 (End sidebar.)

18 MR. DE LLANO: Your Honor, I have no further questions
19 for the agent.

10:28 20 THE COURT: Do you wish to have these while you
21 examine him?

22 MS. PEACHY: I think so, Your Honor.

23 THE COURT: Fine. The clerk then will pass it back.
24 I'm just trying to keep things -- you're the judge of
25 everything here, the jury. But when these items got in his

1 hands here this morning, the lawyer brought up three bags, and
2 I'd just as soon keep things in the same bags as they were in.

3 I'll tell you so you're not surprised over at the
4 sidebar that the bags have writing on it, "Homeland Security"
5 and the like. We don't need that. We're going to get some
6 blank bags. But you will get the three bags with the items
7 because it's the items that are the evidence. Those will be in
8 the jury room when you get the case, and together they're
9 Exhibit 5.

10:29 10 Ms. Peachy, go ahead.

11 CROSS-EXAMINATION BY MS. PEACHY:

12 Q. Agent Diorio, I have a few questions for you.

13 In those bags, you didn't find any Abercrombie & Fitch
14 clothing, correct, that you recall?

15 A. I'd have to look through everything. I don't specifically
16 remember Abercrombie & Fitch.

17 Q. Okay. Do you recall any Victoria's Secret Pink brand
18 clothing?

19 A. May I look through the exhibit?

10:29 20 Q. You may, yes.

21 A. Yes, there does appear to be a pair of underwear labeled
22 Victoria's Secret Pink.

23 Q. Are there any other Victoria's Secret Pink clothing?

24 A. I don't see labels on everything, but there does not
25 appear to be any other Victoria's Secret Pink logo.

1 Q. Okay. And you didn't find any shoes, right? We know
2 that, you didn't find any high-heeled shoes, correct?

3 A. In the bags, no.

4 Q. In the truck?

5 A. Not that I recall.

6 Q. Okay. And you mentioned on direct examination that there
7 were some cameras in Mr. Hinkel's truck, right?

8 A. That's correct.

9 Q. And these were seized by you, right?

10:31 10 A. That's correct.

11 Q. And they were turned over for forensic examination,
12 correct?

13 A. That is correct.

14 Q. By Special Agent Manning, right?

15 A. I believe he did the forensics on this case.

16 Q. And are you aware that he didn't find anything, any sexual
17 images at all, any images of children on those cameras?

18 A. No. Unfortunately, I didn't know the results of the
19 forensics in this case.

20 Q. In front of you is a binder. And I know -- sorry. Things
21 are getting a little crowded up there.

22 A. Sure.

23 Q. But I know up there, somewhere under there is a binder.
24 I'm going to ask you to look at what's already been marked as
25 Exhibit 6 which is right there in front of you, okay?

1 THE COURT: Do you still want him to have the --

2 MS. PEACHY: I do, your Honor, because I'm going to
3 ask him some questions about some of the pictures.

4 THE COURT: You go right ahead.

5 Q. Again, I hope my page numbers are the same as the page
6 numbers on the exhibit. But towards the end of that exhibit,
7 page 67, I believe it is, you'll see a picture of Mr. Hinkel.

8 A. Okay. I do see a picture of the defendant on here.

9 Q. Okay. And you see that he's wearing a white headband in
10:32 10 that photograph?

11 A. Yes.

12 Q. And that white headband is contained in the items that you
13 found in his truck; is that correct? Do you recognize that? I
14 believe it's right there, right?

15 A. Yes, it appears to be the same headband.

16 Q. Okay. And that pink skirt that Mr. Hinkel is wearing in
17 that photograph, is that that skirt?

18 A. It would appear to be this skirt.

19 Q. Okay. Is that the skirt that says -- this one doesn't
20 have a label, correct? It's the other one that has a label,
21 okay.

22 And he's wearing a pair of turquoise underwear, correct,
23 in this photograph? I'm sorry. It's the one before this.

24 He's wearing this in this photograph, page 67?

25 A. Yes.

1 Q. He's wearing a pair of turquoise underwear; and that's
2 this pair of underwear that Mr. Hinkel is wearing, correct,
3 with the yellow ribbon?

4 A. You know, it's tough to tell. It's got the same bow ties
5 on the top, but this one has, you know, has a border on the
6 top, and the one in the picture doesn't appear to have a
7 border. So I'm not saying it's not the same. I just can't
8 tell.

9 Q. It's hard to tell.

10:33 10 A. Yes.

11 Q. On the next page there are a couple more photographs on
12 page 68 of this Exhibit 6. And again, the top image is a man
13 wearing this pink ruffled skirt, correct?

14 A. Yes. It appears to be the same one.

15 Q. And some black thigh-high pantyhose, correct?

16 A. Yes.

17 Q. And you found, I think it's in this bag, there's some
18 black thigh-high pantyhose. Do you recall that --

19 A. Yes.

20 10:34 Q. -- without digging through?

21 A. Yes.

22 Q. The bottom of that page, 68, another image clearly of
23 Mr. Hinkel, correct?

24 A. Yes.

25 Q. And in that one he's wearing a different pink skirt,

1 correct? With the satin sash, correct?

2 A. Again, I can't tell from there because, again, the ribbon
3 on this one looks much more substantial than this one, but it
4 could be the same one.

5 Q. Okay. And Mr. Hinkel, in that photograph, appears to be
6 wearing lipstick and makeup, correct?

7 A. I suppose so.

8 Q. And you found lipstick and makeup, correct?

9 A. Yes, we did. We found makeup.

10:35 10 Q. On the next page, on 69, in the image of Mr. Hinkel at the
11 bottom of that page, he appears to be wearing a wig?

12 A. That is correct.

13 Q. Similar to the wig that you found in the back of his
14 truck, correct?

15 A. Yes.

16 Q. He's wearing a black sheer skirt in that picture, correct?

17 A. Yes.

18 Q. Similar to the black sheer skirt you found in the back of
19 his truck, correct?

20 A. Yes.

21 Q. A black bra, correct; he's wearing a black bra in that
22 picture?

23 A. Yeah.

24 Q. Which was also among the items that you found in the back
25 of his truck?

1 A. Yes. Looks kind of like a tube top thing.

2 Q. A strapless bra?

3 A. I think it's actually -- I'm not really sure what it is.

4 Q. Okay. And turning to page 75 of that Exhibit 6, it's

5 again a picture of Mr. Hinkel, correct?

6 A. Yes.

7 Q. And again wearing the white headband, right?

8 A. Yes.

9 Q. And the black tube top or whatever it is?

10:36 10 A. I think it's like a skirt pulled up over his chest.

11 Q. But that was in -- was that amongst the items that you

12 found in his truck, something like that? This maybe?

13 A. It could be. It's so dark. I can't tell with the

14 pattern, but it could have been this.

15 Q. On the image on page 75, he appears to be wearing a pair

16 of red underwear, correct?

17 A. Yes.

18 Q. And you found a pair of red underwear similar to that in

19 the back of his truck, correct?

10:36 20 A. Yes, we did.

21 Q. And again he appears to be wearing makeup in that

22 photograph, correct?

23 A. Yes.

24 Q. And the underwear, did you notice that some of these have

25 rips in them around the seams, for example, right there?

1 A. Yes.

2 Q. Around the elastic on the leg, correct?

3 A. Yes.

4 MS. PEACHY: I have nothing further.

5 THE COURT: Anything further, Mr. de Llano?

6 MR. DE LLANO: Not from the government, your Honor.

7 THE COURT: I want to take a moment, for me, and put
8 things back in the bag out of which they came. Does the
9 government have further evidence or does the government rest?

10:37 10 MR. DE LLANO: No, your Honor. That's it.

11 THE COURT: The government rests. Defense?

12 MS. PEACHY: We have a motion, your Honor.

13 THE COURT: I'll hear you.

14 **SIDE BAR:**

15 THE COURT: The defense makes, properly, a motion for
16 judgment of acquittal at the close of the government's case.
17 I'm disposed to deny it, but I'll allow it in part. I don't
18 think it's there to the jury on the theory of indecent assault
19 and battery because the pitch here was willing, and I think the
10:38 20 rest of it is straightforward.

21 All right. Motion is denied. Do you want it put
22 on --

23 MS. PEACHY: No, your Honor.

24 THE COURT: Then fine. We will treat this motion as
25 renewed at the close of all the evidence. I will tell the jury

1 that's all the evidence they're going to have. I'll give them
2 a break now for 20 minutes. We'll talk about the charge and
3 come back.

4 (End sidebar.)

5 THE COURT: All right, ladies and gentlemen. That's
6 all the evidence that's going to be presented to you in this
7 case. We're at least, as far as time goes, on track. What
8 happens now is I need to talk with the lawyers about how I'm
9 going to charge you. You've heard my general instructions at
10:39 10 the beginning about how I'm going to charge you.

11 And we'll give you a recess until 11:00, and we expect
12 to have this case in your hands probably by 1:00 this afternoon
13 or thereabouts. And I told you that today we expect you to be
14 with us all day.

15 Now, though you have heard all the evidence, continue
16 to keep your mind suspended and naturally don't start talking
17 about the case among yourselves. You'll be back there, so I
18 don't know if there's anything else to talk about. But don't
19 talk about the case with anyone.

10:40 20 Now, this keeping your mind suspended still and not
21 beginning to talk is very important because there are two vital
22 parts of the case that remain to be heard. The lawyers now --
23 none of it's evidence. The lawyers now get a chance to stand
24 before you and sum up, to argue to you the conclusions that
25 they want you to draw from the evidence that you've seen and

1 heard. Now that is a terribly important part of the case. So
2 don't start talking about the case now, and don't start making
3 up your mind until after you've heard the skilled attorneys
4 marshal this evidence, make arguments about what it shows or
5 fails to show.

6 And then when they're done, I'll be back; and again, I
7 will explain to you the law but now with some more precision
8 because I've presided over the case, as you've been listening
9 to it. So I can be a little more precise in explaining to you
10:41 10 what it is that the government has to prove here beyond a
11 reasonable doubt; and you'll have that in mind, that the burden
12 of proof rests and stays upon the government. So keep your
13 mind suspended. Do not discuss the case either among
14 yourselves, nor with anyone else. You may stand in recess
15 until 11:00, and I'll remain on the bench.

16 (Jury exits.)

17 THE COURT: Please be seated. Let me just say again.
18 I think I said it at the sidebar, but I want to be clear. The
19 defense has renewed its motion for judgment of acquittal at the
10:42 20 close of all the evidence. The Court has denied it; allowed it
21 in part, as explained at the sidebar, but otherwise denied it.
22 And the defense's right is saved following the receipt of the
23 verdict.

24 Now, as to the charge, in essence, you've heard it. I
25 want to say two additional items about it, and then I will ask

1 for questions. I do propose -- well, maybe I should say more
2 than that. Let me go through the defense very quickly. Well,
3 I'm going to touch on the presumption of innocence, as I did
4 before, at the start of the trial, emphasize that proof beyond
5 a reasonable doubt rests on the government. I'm not going to
6 define reasonable doubt. I will repeat it often.

7 I will give request number 3 in my language, but I'll
8 make mention of the fact and try in a positive way. I'm not
9 making mention of the indictment because I'm not sending the
10:43 10 indictment. When we get to the substance, you have heard my
11 charge, and there's no reason to change that. I think it was
12 accurate. However, I am going to give defense instructions
13 number 9, perhaps not in -- I am going to emphasize that the
14 communication must be enticing the minor. I think that is the
15 law. The rest of it I think is all the same.

16 I will give not the defense entrapment charge, but I
17 will give the guideline charge on entrapment in the First
18 Circuit, the First Circuit guideline book.

19 Questions on the part of the government?

10:45 20 And of course the order of argument is established by
21 the rules. Government will argue first and then the defense
22 will argue. No more than half an hour a side. I don't invite
23 you to take a half an hour because the case, though a very
24 triable case, is a straightforward single investigation, single
25 incident case.

1 I do want to say a word about government rebuttal. It
2 best be real rebuttal. I'll give you about two minutes of
3 stem-winding, arm-waving, but everything else had better be,
4 "They argued this, but remember that." You can do it better
5 than that, but it has to be true rebuttal. You don't get two
6 chances to close. And if I think you are trying to make a
7 second closing, I'll crown you.

8 Now, questions on the part of the government?

9 MS. PIEMONTE-STACEY: Your Honor, in the preliminary
10:46 10 instruction, I just can't recall whether you gave the
11 pre-charge that the internet was a means of method or
12 interstate commerce.

13 THE COURT: I don't know if I used those words, but I
14 will.

15 MS. PIEMONTE-STACEY: Thank you, your Honor. And I
16 think both parties have both requested a persuade, induce,
17 entice definition. The government, of course, proposed that
18 the terms aren't defined in the statute, and the jury may use
19 the common sense understanding of the terms to determine
10:46 20 whether the defendant was the --

21 THE COURT: I propose to do that, but I'm going to use
22 the word -- though I'm picking another word out of the statute,
23 "entice" is to lure. Again, I will use the words "persuade,"
24 "induce," "lure," as roughly equivalent to "entice," yes, I'm
25 going to say that. And they can use their plain and ordinary

1 understanding of those words.

2 MS. PIEMONTE-STACEY: And I believe this is the last
3 question I have, your Honor. I do remember on the pre-charge
4 you gave an instruction how the government is permitted to
5 subterfuge, a false identification --

6 THE COURT: That will be part of the entrapment
7 instruction.

8 MS. PIEMONTE-STACEY: What the government requested,
9 and I'm not sure if that was given in the pre-charge, your
10:47 10 Honor, is the failure to accomplish the intended act to be
11 immaterial. In other words, the fact that he didn't go there
12 and didn't actually have sex with the --

13 THE COURT: That will be covered by attempt. This is
14 an attempt case. The fact that it was a legal impossibility
15 makes no difference. I'll talk about attempt in his taking a
16 substantial step toward the accomplishment of the crime.

17 MS. PIEMONTE-STACEY: That concludes --

18 THE COURT: Defense?

19 MS. FISHER: Yes, your Honor. With regard to the
20 entrapment instruction, your Honor, we don't think that the
21 pattern instruction accurately lays out sufficiently the
22 inducement because it's more geared to inducement that is more
23 traditional, and I would ask your Honor to give --

24 THE COURT: "Inducement" is, the language here is that
25 the government did not persuade or talk Mr. Hinkel into

1 committing a crime. I'm going to give that. That's what it
2 says.

3 MS. FISHER: As examples, I think the --

4 THE COURT: I'm not disposed to give examples.

5 MS. FISHER: Your Honor, I would ask your Honor to
6 give the portion of the instruction that we referenced from the
7 case of *United States vs. Young* from the Eighth Circuit.

8 THE COURT: Yes. Let me find it here, specifically.

9 Where is it?

10:48 10 MS. FISHER: I'm sorry. It's on page 17 of our
11 proposed instructions. "Some of the inducement factors
12 relative to enticement of a minor to engage in sexual activity
13 may include whether the government made the initial contact."

14 THE COURT: No. I'm not disposed to -- does the
15 defense want me to give that -- the government want me to give
16 that?

17 MS. PIEMONTE-STACEY: No, your Honor.

18 THE COURT: No. I'm going to stick to the guideline
19 charge. Your rights are saved. Anything else?

10:49 20 MS. FISHER: No, your Honor.

21 THE COURT: Very well. So we'll take a recess until
22 11:00. The government will close. Then I think maybe another
23 ten-minute recess so we don't have to sit for two hours
24 listening to three of us talk. And so I can call people by
25 name, who is going to close for the government?

1 MS. PIEMONTE-STACEY: I am, your Honor.

2 MS. PEACHY: And I am.

3 THE COURT: Fine. We're recessed until 11:00. We're
4 recessed.

5 (Recess taken 10:50 a.m. to 11:05 a.m.)

6 THE COURT: As I said, ladies and gentlemen, we now
7 come to one of the most important parts of the trial, the
8 moment when the attorneys stand up before you and quite
9 candidly attempt to persuade you with respect to the evidence
11:05 10 that you've seen and heard.

11 This is the highest calling of the attorney, to stand
12 before an American jury and argue on behalf of the client.
13 It's what we think of when we think of the legal profession
14 here in the United States. I do have one -- I say to you, I
15 know you're going to give the attorneys the same courteous and
16 careful attention that you've given me and you've given all the
17 witnesses throughout this trial.

18 Now the caution. These attorneys weren't there. They
19 don't know what went on. They have tried through the
11:06 20 presentation of evidence to lay matters before you in an
21 appropriate fashion. Now they'll argue the strengths and the
22 weaknesses of what you have before you. Just remember, they
23 weren't there. They don't personally know. So if your memory
24 or your beliefs about the evidence is different than something
25 an attorney argues to you here, your memory governs because it

1 is the government here that bears this burden of proof beyond a
2 reasonable doubt, just as it was when evidence was being
3 received; the government gets a chance to make their closing
4 argument first.

5 Ms. Stacey.

6 MS. PIEMONTE-STACEY: "Lisa, I have to ask, does
7 Samantha know she can never tell anybody about this?" "Does
8 Samantha know we can get into a lot of trouble, even years
9 later?" That, ladies and gentlemen, was the e-mail that the
11:07 10 defendant sent to the undercover agents on the morning of March
11 19, 2014. After he left his home in Connecticut and was
12 traveling more than two hours to Massachusetts to meet what he
13 thought was a 15-year-old minor for sex.

14 Now, ladies and gentlemen, you've heard the evidence
15 in this case. You've seen exhibits. You've heard the
16 testimony, and now it's time for you to evaluate that evidence.
17 And the government has proved beyond a reasonable doubt that
18 the defendant attempted to entice a minor into a legal sexual
19 activity. How do you know? You're going to use your common
11:07 20 sense in evaluating the evidence, the weight of the evidence
21 and the testimony that you heard. But what did you hear,
22 ladies and gentlemen?

23 On February 14, 2014, undercover agents for Homeland
24 Security Investigations -- you've heard that referred to as
25 HSI -- posted an ad on craigslist, on the website craigslist.

1 And they posted that ad in the "Casual Encounters" section, and
2 they were acting in an undercover capacity. And what did that
3 ad say? You saw the exhibit. It says -- they posed and
4 pretended to be a mom with a daughter, open-minded, seeking a
5 taboo relationship that needed to be discrete.

6 Ladies and gentlemen, within minutes, within minutes
7 of that advertisement being posted, that man, the defendant,
8 responded. And you saw his response, the very first page of
9 Exhibit 2. He said, "Here are my likes. I like blindfolds" --
11:08 10 "Here of my sexual likes. Blindfolds, handcuffs, sex toys,
11 oral sex," et cetera. He wrote a description of a sexual
12 scenario that he imagined in response to that ad. He sent a
13 description of himself, and he attached a picture of himself.

14 So what did the undercover agents do at that point,
15 ladies and gentlemen? Well, they said, "I'm Lisa Richards.
16 I'm trying to introduce my daughter to sex. Do you mind if
17 she's young?" And you saw those e-mails. And the defendant's
18 response was, "How young?" And, "I hope we can make this
19 work."

11:09 20 All of that, ladies and gentlemen, all of it within
21 the very first hour of the ad being posted. And minutes later,
22 the undercover remembered the testimony you've heard, posing as
23 an abusive mother, said, "My daughter is 15, but she's
24 experienced, and you heard that the undercover agents adopted
25 these personas; the persona of Lisa Richards, offering her

1 15-year-old daughter for sex, and the persona of Samantha,
2 Sammy, who was an experienced 15-year-old child, according to
3 her mom. And what was the defendant's first response of after
4 hearing she was 15, the very first e-mail, "Sounds very
5 naughty." That was the defendant's first response after
6 hearing Sammy was 15 years old.

7 Yes, it was followed by, "I'm concerned about her age
8 because legally she should be 16 years or older"; and
9 immediately following in that same e-mail, "I'm concerned about
11:10 10 her age," was all the questions that that man, the defendant,
11 had about that 15-year-old's sexual experience. And the e-mail
12 ends with the defendant saying, and I quote, "It's a very big
13 turn-on for me." You'll have those e-mails in the jury room,
14 ladies and gentlemen.

15 From there you heard Agent Squire and you heard the
16 testimony, that over a one-month period of time, undercover
17 agents and the defendant exchanged more than 200 e-mails. All
18 of them with one sole purpose in mind, sex with a 15-year-old
19 minor named Sammy.

11:11 20 Did the defendant have the opportunity to decline the
21 invitation? Did he have the opportunity to decline Lisa
22 Richard's invitation to introduce her daughter into sex? He
23 sure did. Not once but twice. But he stayed. You saw the
24 evidence immediately after the defendant said, "I'm concerned
25 about her age since legally she should be 16 years old." The

1 undercover agents sent an e-mail back to the defendant and
2 said, "She's not. I guess this conversation is over." "She's
3 not 16. I guess this conversation is over." Did the defendant
4 say, "Thank you," and move on to the next craigslist ad? No,
5 he didn't. He sent two e-mails. And let me read to you pieces
6 of some of those e-mails. "Mommy is very naughty," after he
7 finds out she's 15 years old. "So how and when did you get
8 your daughter involved? Daddy would like to and needs to spank
9 mommy and daughter. I'm getting aroused just thinking about
11:12 10 the play we can have together." And specifically, "Nope. It's
11 not over. I want to talk more. I'm very intrigued by it all,
12 such taboo and naughty play." That was the defendant's
13 response to, "She's not 16, so I guess this conversation is
14 over." And that response all is happening within an hour and a
15 half of the ad being posted on craigslist.

16 So what do the undercover agents do next? They gave
17 the defendant a second opportunity to back away, a second
18 opportunity to get out of Lisa Richards introducing her
19 15-year-old daughter to sex. What did they say? They said, "I
11:12 20 don't have time if you're not serious," as they're pretending
21 to be Lisa Richards. "I don't have time if you're not serious.
22 You can imagine I'm getting a lot of offers." Did the
23 defendant say, "No, thank you"? Did the defendant say, "Let me
24 think about it"? The defendant in the e-mails that you saw
25 said, "I am serious. I will not waste your time." He knows

1 Sammy is 15 years old at this point.

2 And when the undercover agent stopped e-mailing with
3 the defendant later that day on February 14, what was the
4 defendant's response? He didn't go off. He sent three e-mails
5 to undercover agents, three e-mails that the undercover agents
6 didn't respond to right away. The first e-mail, "Let's talk
7 more." Undercover agents don't respond. A few hours go by.
8 The second e-mail -- this is all on February 14 -- "I wouldn't
9 mind talking to her." That's Sammy. The second e-mail,
11:13 10 undercover agents don't respond. And then the third e-mail,
11 "Hmm. Did you lose interest, or did you just get busy?" Those
12 three e-mails from the defendant to undercover agents all not
13 responded to on February 14 by the undercover agents.

14 And then you heard a period of time went by. Four,
15 five days, and there was no communication at all between the
16 undercover agents and the defendant. And you heard Agent
17 Squire testify that there were other investigations ongoing
18 during that time and they were triaging the various responses
19 that they got to this craigslist ad.

11:14 20 So on February 19, 2014, five days after the ad was
21 posted, undercover agents responded to, "Did you lose interest,
22 or did you just get busy?" They responded to the defendant,
23 and you saw that response. "Hey. Sorry. Lost track of the
24 conversation. Can you believe the snow?" It was this time of
25 year at that point, ladies and gentlemen, lots of snow. "Here

1 I am. This is a picture of me." You heard Agent McDonagh
2 testify that she had posed for this picture that was supposed
3 to be Lisa Richards. So Agent Squire attached the picture of
4 agent McDonagh pretending that she was Lisa Richards, and that
5 e-mail then got sent to the defendant. And from that point on,
6 there was continuous communication between the defendant and
7 the undercover agents.

8 During the e-mails did the defendant say he was
9 concerned about the minor's age? He said that. He typed those
11:15 10 words. What was his concern? Getting caught, ladies and
11 gentlemen, getting into a lot of trouble, just like he wrote on
12 March 19. That was his concern. Look at the e-mails. He knew
13 how old the minor was. He says so in the e-mails, and the
14 e-mails to him say so.

15 Look at the e-mails. He knew what he was getting
16 into. He says so in the e-mails. And yet, the defendant still
17 showed up on March 19 at Sammy's apartment, at that 15-year-old
18 minor's apartment. And look at the e-mails where the defendant
19 talks about his supposed concern for her age. Each time -- and
11:16 20 there are only a handful of them, ladies and gentlemen, four or
21 five sprinkled throughout hundreds of e-mails between the
22 defendant and undercover agents. And in each of those e-mails
23 where he says, "I'm concerned about her age. Are you sure this
24 is okay," each time immediately following the supposed
25 statement of concern, he says things like, "As long as she

1 desires this, I'm game." Same e-mail, same piece of paper. He
2 says, "Where do we go from here?" He says, "I want this to be
3 fun, playful and a good experience for her." He says, "It's
4 hot because it's so naughty." And he says, "It's a turn-on to
5 have her attracted to me, considering our age difference."
6 That's what you'll find in the e-mails where he supposedly
7 expresses concern about her age.

8 And then the defendant took one step after another to
9 entice that minor into having sex with him. Look at the body
11:17 10 of e-mails that the defendant has with Lisa Richards, the woman
11 who is going to offer up her daughter for sex. Look at the
12 things he asks her. Look at the ways he tries to assure her to
13 get her to allow that child to have sex with him. "Is Sammy
14 seductive and sensuous," he asks. 15 year old girl. "Does
15 Sammy like the idea of me being her Daddy and her being my
16 little girl?" "I want this to be fun, erotic, sensuous and
17 playful." "What are Sammy's likes and dislikes?"

18 All of these questions and statements coming from the
19 defendant to the mother so that the mother chooses him so he's
11:18 20 the one who can have sex with her 15-year-old daughter. He
21 says to the mom, "Have Sammy text me or send me an e-mail, and
22 we'll talk directly but save them, save those e-mails so that
23 you can see what she and I are talking about," again assuring
24 the mom this is going to be okay, telling Lisa Richards that it
25 would be better for Sammy to be in her own room where she's

1 familiar, comfortable and secure rather than in a hotel when
2 they have sex. And then getting Lisa Richard's involved, "How
3 do you see this going? What type of experience does she have?
4 Can you get her to take this picture for me?"

5 Look at the second body of e-mails, ladies and
6 gentlemen, that the defendant himself had with Sammy. March
7 12, 2014. There's a large volume between that man and what he
8 thought was a 15-year-old child. What does he say to her?
9 What does he say to Sammy? "Hi, sweetheart. How was your
11:19 10 day?" "Have you been thinking of you and me?" "I'll make it
11 fun and enjoyable for you sweetheart." "Is there anything you
12 like or hope I do with you?" "You're a very pretty lady."
13 "Can't wait to see you." "Would you like me to touch you
14 there?" "Are you excited to kiss a man for the first time?"
15 "I'll be very good to you." "I can't wait to hold you in my
16 strong yet gentle arms and feel your body against mine." To a
17 15-year-old girl.

18 Then, of course, ladies and gentlemen, was the travel.
19 March 19, the day the defendant had arranged to meet with Lisa
11:19 20 Richards to meet her 15-year-old daughter for sex. The
21 defendant packed up that backpack that you saw, left his home
22 in Connecticut, got into a truck, drove two hours to Boston,
23 more than two hours to Boston, Mass., the e-mail that morning,
24 "Does Sammy know she can't say anything, or we're going to get
25 in a lot of trouble?"

1 The travel, over two hours. Lots of time to think,
2 plenty of time to turn around, lots of communication with the
3 undercover agents. And then the defendant, thinking he
4 attained that mental state with that minor, thinking she'd
5 engage in sexual activity with him, all of those steps, all of
6 those steps to entice that minor into sexual activity with him,
7 a sexual activity that is illegal in the Commonwealth of
8 Massachusetts because a minor under 16 cannot consent to sex.

19 And look at the travel from Connecticut to
11:21 20 Massachusetts. Who forced him into the truck that morning?
21 Well, that would be nobody. He got up, he made a decision. He
22 packed that backpack full of all the tools he needed to have
23 sex with a child. He walks out of his house -- you saw the
24 tape, ladies and gentlemen -- methodically. Comes out of the
25 house, puts something into the car. Goes back into the house,

1 gets something else. Comes back to the car, methodically
2 planning. He got in that car, and no one forced him to take
3 the two-hour drive. No one forced him to pack the bag. And
4 when he gets to Watertown, Massachusetts, certainly no one
5 forced him out of the car, and no one made him knock on that
6 apartment door. The defendant had plenty of opportunity to get
7 out of sex with a minor. He chose to stay. "I will not waste
8 your time, he said." He didn't.

9 Now, as you will be instructed, more instructed, this
10 is an attempt case because there was no real victim. But
11 ladies and gentlemen, he didn't know that. He didn't know that
12 when he sent hundreds of e-mails detailing the sex he would
13 have. He didn't know that when he packed that bag and brought
14 it with him from Connecticut to Massachusetts. The defendant
15 didn't know she wasn't real when he traveled.

16 And ladies and gentlemen, let's talk about that
17 backpack for one minute. You saw all the sex toys that were in
18 that backpack. I don't need to parade them out here in front
19 of you. But what was in that backpack, ladies and gentlemen?
20 The sex toys, sure; sex toys that he said in e-mails he would
21 bring with him; sex toys that he listed he was interested in
22 when he first responded to the ad; sex toys that he mentioned
23 and all of the ways he would have sex with a 15-year-old. So
24 the sex toys are in the bag. But ladies and gentlemen,
25 condoms. There were condoms in the bag. And do you remember

1 the e-mail where the defendant says, "Is Sammy on birth
2 control?" Do you remember the e-mail where the defendant says,
3 "Can't have her making babies at her age, can we?" Condoms
4 were in the bag. What else was in the bag? Cologne. Do you
5 remember the e-mail about the cologne and undercover agents
6 going back and forth and their commenting on how they smell
7 people in a mall, and Sammy and Lisa Richards would say, "That
8 guy smells nice." And what does the defendant say? "I'll
9 bring some cologne with me. She can spray it on her pillow, so
11:24 10 she'll have memories of me taking her there." He said that
11 about the 15-year-old girl. And there was the cologne, right
12 in the bag.

13 And then, ladies and gentlemen, further evidence of
14 his intent, whether undercover agents asked him to bring
15 something, whether he decided on his own, a stuffed animal, a
16 stuffed animal that he thinks is appropriate for a little girl
17 who he is trying to have sex with. Steps to entice that minor
18 into engaging in sexual activity with him, everything the
19 defendant said he would use and he would bring when he was
11:25 20 having sex with a minor.

21 And so ladies and gentlemen, you've heard a lot about
22 these e-mails and you've heard that, you know, sometimes they
23 got graphic. Well, undercover agents can engage in subterfuge,
24 undercover agents can adopt a false identity to investigate
25 crimes, and that's what these undercover agents did. But do

1 you know what talking dirty did? It made it real. Lisa
2 Richards was an abusive mom offering her daughter up for sex,
3 and the dirty talk going both ways kept that situation real.
4 These agents never forced the defendant to do anything. They
5 provided him with an opportunity. The defendant took that
6 opportunity. The defendant had two opportunities to back out.
7 He didn't. He stayed. And he showed up at that door on March
8 19, 2014.

9 Now, the Court will instruct you on the law in this
11:26 10 case, but let me hit and discuss with you some of the elements
11 that I think be you'll be hearing.

12 First, the attempt to entice a minor to engage in
13 sexual activity, there was no real victim, and this is an
14 attempt case, and the Court will instruct you on the law. But
15 the defendant intended to entice that minor into having sex
16 with him, and you saw the evidence and substantial steps that
17 he took, the e-mailing with Lisa Richards, the e-mailing and
18 texting with Sammy. The conversations with the undercover
19 agents, packing that bag with stuff that would help him and the
11:26 20 travel to Massachusetts, ladies and gentlemen.

21 And then there's an interstate commerce element. You
22 heard the testimony of Agent Manning who did the forensic
23 evaluation on the computers and the computer media that were
24 seized from the defendant's home and his office. And you'll
25 hear that he sent and received e-mails over the internet on his

1 computer and that the computer belonged to the defendant.

2 "Child," under the statute is someone who is less than
3 18 years old. And you heard the defendant thought that Sammy
4 was 15 years old.

5 And finally, to engage in a legal sexual activity.

6 The e-mails detail that sexual activity. I've summarized the
7 sexual activity. I'm not going to do it again, ladies and
8 gentlemen, but all of the sexual activity that the defendant
9 intended to engage in, wrote that he intended to engage in,
11:27 10 described what he intended to engage in, all in those e-mails,
11 the backpack, the fact that Sammy was a minor, and that she
12 can't consent because, under Massachusetts law, a child under
13 16 cannot consent to sex.

14 Ladies and gentlemen, the defendant's e-mails to
15 entice a minor to engage in steps -- I know engage in sex, the
16 steps he took to get her to engage in sex, that shows you his
17 intent. And keep in mind how this enticement, the defendant's
18 enticement of a minor began and how it ended. After the first
19 opportunity to walk away, that defendant says, "Nope, it's not
11:28 20 over." After undercover agents gave him a second opportunity
21 to walk away, he said, "I'm serious. I will not waste your
22 time." And then the morning of, "Does Samantha know we can
23 never tell anyone about this, that we can get into trouble,
24 even years later?" That, ladies and gentlemen, shows you the
25 defendant's intent.

1 We ask that you find the defendant guilty. Thank you.

2 THE COURT: Ms. Peachy.

3 MS. PEACHY: Thank you, your Honor.

4 "I'm pursuing this only because she is consenting. If
5 I feel or hear her change her mind, I will not engage her."

6 There is no coercion in this case. There's no child that needs
7 coercing. If anyone's being persuaded into anything in this
8 case, it's Mr. Hinkel, who is being persuaded to commit the
9 crime the government now charges him with.

11:29 10 We probably all had the experience of buying a car.
11 You go to the lot. You see a sticker price on the car. That's
12 the price that's advertised. In this case there's something
13 being advertised. It's an ad on craigslist put out by the
14 undercover agent, which says nothing about a minor.

15 And sometimes it's that way when you're buying a car.
16 You see a sticker price advertised, and it says nothing about,
17 "Oh, this is included," and or, "That isn't included." And
18 when you talk to the dealer about it, that's when you start to
19 find out, "Oh, that price doesn't include that and doesn't
11:30 20 include that," and the dealer tries to talk you into it a
21 little bit. And you express some concerns. Maybe you express
22 some hesitations, and the dealer reassures you. The dealer
23 wants to make a deal. And eventually maybe you accept the
24 dealer's offer.

25 Now, wouldn't it be strange if after you buy the car

1 from that dealer, he then later says, that you, the buyer,
2 coerced him into making the deal? Well, that's pretty much
3 what the government is doing here in this case.

4 They advertise on craigslist, personal ads, casual
5 encounters, it's a regular website, personal ad website. It's
6 not some child predator website or child pornography website; a
7 regular website. They advertise this mother-daughter scenario,
8 and they don't say anything about the scenario involving
9 someone who is underage.

11:31 10 So when you look at Mr. Hinkel's initial response to
11 that advertisement, keep that in mind. He doesn't know when he
12 writes that initial response that this involves an underage
13 person. He talks about how he's a Daddy dom, and, in fact,
14 their advertisement said that they're looking for some dom,
15 some domination-type sex. So he tells them, "I'm an
16 experienced Daddy/dom." And he lists all those other things
17 he's interested in, this 50 Shades of Grey-type stuff, bondage,
18 spanking, toys, all this stuff we know that he's interested in.

19 But what doesn't he say in that initial response? He
11:31 20 doesn't say anything about wanting to have sex with someone who
21 is underage. That's not on his laundry list of interests. We
22 know that from his initial response. And what happens when he
23 is told that the daughter is young? He's not just told that
24 she's 15. By the way, we're not talking about an
25 eight-year-old here. We're talking about a 15-year-old. The

1 agents designed this as a 15-year-old. And he's not just told
2 that she's 15. It's 15 but she's experienced. Both things
3 designed to try to make this more okay for Mr. Hinkel, for him
4 to feel more comfortable about this. She's already sexually
5 experienced. She's 15. It's all okay.

6 What else does Agent Squire tell Mr. Hinkel about the
7 girl's sexual experience? Agent Squire tells him this
8 (indicating). Agent Squire writes this to him (indicating).
9 Agent Squire writes this to Mr. Hinkel (indicating) and writes
11:33 10 this to Mr. Hinkel (indicating), referring to the fact that
11 they've looked at pornography together online.

12 You heard that one of the first things that Mr. Hinkel
13 says when he's told that the girl's age is that he's concerned
14 about the age. And the prosecutor told you that maybe a
15 handful of times he expressed some concerns, but it's only
16 because he was afraid of being caught. Well, let's look at
17 what Mr. Hinkel said. "As long as she desires this, I am
18 game." "That made me feel more comfortable, knowing she's on
19 board with this." "I was concerned and skeptical at first when
11:34 20 you told me her age." "I am pursuing this only because she is
21 consenting." "If I feel or hear her change her mind, I will
22 not engage her. I will hate myself forever leaving an
23 emotional scar on her." "I won't lie. I do have some
24 conflicting feelings about this." "It's hot because it's so
25 naughty, but I do sometimes feel like I shouldn't be doing

1 this." "I fear ruining her emotionally, but as long as she is
2 willing and excited about this, I will proceed." "So she's
3 really okay with my playing with her?" "I'm still not sure
4 what we will be doing yet. I'm going to play it by ear and
5 gauge it based on Samantha's feelings and comfort level."
6 That's the day before he's supposed to meet her. "Lisa, her
7 comfort and her feelings is my priority."

8 Again, the day before the meeting is supposed to
9 happen, "Lisa, I really am nervous. This is so out of my
11:35 10 element. I never thought I would be with such a young girl.
11 When I answered your ad, I was thinking mother-daughter, like a
12 mother in her 40s and a daughter in her 20s. I guess I won't
13 know how I will really feel until I see Samantha's response and
14 excitement." "Even though I have always been dominant and take
15 charge, this is one situation that I just don't know how things
16 will transpire yet." "I know I sound like a broken record, but
17 I really don't know how things will go." Those hesitations are
18 real. He tells them that he is not sure, that he's not going
19 to do anything that she doesn't want to do. And he's reassured
11:35 20 by the agent, even when he expresses those concerns and
21 hesitations. You can look at what the agents write back to him
22 after he writes those e-mails to the agent expressing his
23 concerns.

24 Here he is, charged with attempting to coerce a minor
25 into sexual activity. It's kind of a strange thing in this

1 case, attempting to coerce a minor that they created,
2 attempting to coerce a minor into a situation that they created
3 before Mr. Hinkel even entered the picture.

4 Keep in mind that there's that one crucial element
5 here. I keep saying it, coercion, persuasion, enticement.
6 This isn't about whether Mr. Hinkel intended to have sex with a
7 minor. That's not what he's charged with. That's not what the
8 government has charged him with here. Did he intend to have
9 sex with someone underage? Sounds like it. You know, the
11:36 10 government spent a lot of time talking about that. But what
11 he's charged with is luring a child over the internet into
12 agreeing to have sex with him. And that's not what he did.

13 It's not about whether he drove two hours. It's not
14 about whether he traveled to go meet the mother and the girl.
15 That's not what he's charged with. He's charged with coercing
16 a minor with his communications over the internet. That's what
17 makes this a federal crime, is that internet part of it, that
18 it was those communications, those e-mails that he's writing
19 that were designed to lure the minor into agreeing to have sex
11:37 20 with him.

21 Like I said, the government did spend a lot of time
22 talking about the trip that Mr. Hinkel made from his house in
23 Connecticut to Watertown. They obviously spent a lot of money,
24 resources, with this helicopter taping him getting from his
25 house to his truck, following him from Connecticut to

1 Massachusetts, all these agent on the ground, the guy in the
2 helicopter, the agent with the Easter decorations in the
3 window. They put a lot of effort into this case. But you know
4 what? They overplayed their hand. They really overplayed
5 their hand.

6 The stuff that Mr. Hinkel has in his truck, I showed
7 you this morning -- unfortunately, we have to see these
8 pictures of Mr. Hinkel, right? He's dressed in women's
9 clothing, and he's wearing makeup, and he's wearing the things
11:38 10 that are in the truck. I told you that in my opening, that
11 when they introduce the stuff in the truck, we know what it's
12 for because we have pictures of Mr. Hinkel wearing it. It's
13 not for Sammy. It's for him. And the stuff that he has in the
14 backpack, again, I told you in the opening keep in mind who
15 told him to bring that stuff? The gift. Are they saying that
16 that's the proof that he was trying to coerce the minor?
17 Because that was them who told him to bring the gift, not once
18 but twice, once by Lisa and then again as Sammy, who asks about
19 if he's going to bring her something. The cologne, that's
11:39 20 their idea. The lube, that's their idea. The sex toys, they
21 want him to bring the toys because they think it would be fun
22 to use the sex toys.

23 And what else did we find out about some of the things
24 in the truck? When Mr. Hinkel is interviewed by agents when
25 he's arrested, he tells them, "It's for sex with other women."

1 And we know some of that from some of the stuff that they got
2 off his computer, some of these other e-mail fragments, that
3 he's having this BDSM type of sex with other people. You can
4 see that in the e-mail chats.

5 I would like you to focus on where the actual coercive
6 statements are. Where is it that Mr. Hinkel is talking to
7 Sammy or through the mother and trying to coerce this girl into
8 having sex, to do something that she's not willing to do?
9 Where is he trying to bend her will? He actually only speaks
11:40 10 to Sammy twice. And you'll see, you can look at those e-mails.
11 On February 24 and March 12. He actually calls her sweetheart.
12 Is that him trying to coerce her into sex? Asking her her
13 favorite color, talking nice to somebody, is that what we're
14 going to call coercion? Is that luring a child into having
15 sex?

16 And what does he talk about doing when he's actually
17 talking to Sammy? When he talks to Sammy, all he talks about
18 is kissing and touching. He doesn't talk to Sammy about having
19 sex with her. All he talks about asking her to do is kissing
11:40 20 and touching, and that's not illegal. Sure, it's
21 uncomfortable, and no one really wants to think about it
22 probably, but that's not a crime. Kissing a 15-year-old, as
23 long as she's willing, is not a crime. Touching is not a
24 crime. The crime is if he's trying to lure her into agreeing
25 to have sex with him, and that's not what he's talking about

1 when he talks with Sammy.

2 What does the agent tell Mr. Hinkel about how Sammy
3 feels about this whole thing? Agent Squire tells Mr. Hinkel
4 that she -- they showed Sammy all of the pictures. This is
5 including the picture of a penis, that she thinks he's someone
6 famous. And I'm not going to read out loud the rest of it
7 that's there. That's how Sammy feels about all this, according
8 to what the agent is writing to Mr. Hinkel.

9 Sammy says that he's hot, that she thinks it's going
10 to be fun when she's asked about how she feels about this
11 meeting coming up. When Mr. Hinkel says, "Would you like me to
12 touch you there as well," this is after Sammy says that she
13 rubs herself sometimes, she says, "I think so. Mom said you're
14 really good at it, and if it feels really good when a man does
15 it." Does that sound like someone he's coercing into
16 something? When he says, "I hope you like to kiss," she says,
17 "I do. I haven't kissed a man before, and you are very hot.
18 Mom showed me all the pics, too." The agent has Sammy refer to
19 Mr. Hinkel as her BF, as her boyfriend. She signs off a e-mail
20 with HAK, hugs and kisses. Is this someone who he's luring
21 into something?

22 After Mr. Hinkel chats with Sammy, the agent, as Lisa
23 says, "The way she was floating around here on cloud nine when
24 she was done talking with you." And it goes on from there.

25 When Mr. Hinkel is corresponding with the agents,

1 there is certainly some very explicit conversations that get
2 very uncomfortable to read and to listen to. But keep in mind
3 that the agent is reciprocating. And not just that. He's
4 going even further, even when Mr. Hinkel isn't asking or
5 engaging in any back-and-forth conversation. The agent comes
6 up with these fantasy stories that he throws out there to
7 Mr. Hinkel like that one on March 15 where he talks about how
8 Lisa and Sammy are sitting together talking about Mr. Hinkel
9 and thinking about him. And she starts masturbating herself
11:43 10 and masturbating her daughter, and it's all like a dream. Is
11 that the agent just -- whatever he said -- like continuing some
12 persona or trying to be convincing in this persona? No.
13 That's him trying to hook Mr. Hinkel, trying to lure him
14 further into this whole scenario that they've created.

15 What else does the agent write? What are some of the
16 other things that Agent Squire, a Homeland Security agent, who
17 is sitting at his computer, is writing? He writes that
18 (indicating). He writes that about the 15 year old
19 (indicating). He writes that (indicating). He writes that
11:44 20 (indicating.) He writes that to Mr. Hinkel (indicating). He
21 writes this, after Mr. Hinkel sends the picture of a penis
22 (indicating). He writes that (indicating). He writes that
23 (indicating). He writes that (indicating). He writes that
24 (indicating).

25 This is more than a case where the government is

1 creating, offering on opportunity for Mr. Hinkel to commit a
2 crime. It's more than that. They're not just offering him an
3 opportunity. This is entrapment. This is the government going
4 too far and persuading and talking Mr. Hinkel into committing a
5 crime. How do they do that? How do they induce him into
6 committing this crime? They do it by complimenting him,
7 telling him he's hot, by telling him his penis is big. They do
8 it by writing pornography to him, by suggesting repeatedly that
9 he talk to the 15-year-old Samantha, by suggesting that he
11:46 10 bring a gift, which now the government wants to argue is
11 evidence of his enticement of the girl. They induce him by
12 making it all seem okay because the girl is 15, but she's
13 already had sex. And the mom's continuing to molest her and
14 have sex with her and kind of make it all seem okay.

15 They induce him by offering the mother as a willing
16 person, as a person who wants to have sex with Mr. Hinkel and
17 wants to have the kind of BDSM sex that Mr. Hinkel is
18 interested in. They induce him by pursuing him again, even
19 after he stops writing to them for five days.

11:46 20 Whatever their excuse is, I don't -- it doesn't
21 matter. Mr. Hinkel stops writing to them for five days. Okay,
22 so the night of the 14th he says, "Did you lose interest, or
23 are you just busy?" Is that someone who is trying to lure a
24 child who just stops writing? They pick up the communications
25 again after five days of Mr. Hinkel not saying anything to

1 them. They induce him by putting the ad out there that doesn't
2 say anything about this involving a minor.

3 And the other part of entrapment, you'll hear the
4 judge tell you, is that Mr. Hinkel was not predisposed to
5 commit this crime; that he wouldn't have otherwise committed
6 this crime if it weren't for what the government did in this
7 case, and we know that there is absolutely no predisposition on
8 Mr. Hinkel's part. You heard he has no criminal record. He's
9 married. He has two children. They talked to his wife. They
11:47 10 talked to his children. They didn't find any evidence of abuse
11 or anything like that. His wife, when she found out, was
12 shocked, fell to the floor crying. They looked through five
13 computers, God knows what else, the cameras in the truck, other
14 electronic devices, but five whole computers, 26,000 pages of
15 data retrieval here.

16 And what do they find that shows that Mr. Hinkel was
17 predisposed to commit this crime? Do they show any evidence of
18 him trying to lure other children, trying to talk to other
19 children, looking at child pornography, going to child
11:48 20 pornography websites? You know what they find? They find five
21 animae cartoon pictures in a web cache file that we have no
22 idea where that came from, when it got there. It could have
23 been just -- we do know that he didn't visit any child
24 pornography websites, so we know it doesn't come from a website
25 where he's going to look for child pornography. God knows how

1 that ends up there. That doesn't show that he's predisposed to
2 commit this crime. But that's all they got, so they got to put
3 it out there. That's how much they're reaching here.

4 Mr. Hinkel has no child pornography, no evidence that he was
5 trying to have sex with minors at all. And we even know that
6 from his own words, saying that, you know, he once placed an ad
7 for something like this but the ad said the girl had to be of
8 legal age.

9 He's obviously having a lot of kinky sex. We talked
11:49 10 about this in the opening. There's a lot of mention of his
11 interests. And that might make you uncomfortable, and you
12 might not like hearing about that kind of stuff, and you know
13 he's married and he's not a saint, that's for sure. But he's
14 not a pedophile, and he's not a predator.

15 Coercion, inducement, persuasion, enticement, that's
16 one of the critical elements here. Think about what those
17 words mean to you. And the government must convince you beyond
18 a reasonable doubt. You must be convinced beyond a reasonable
19 doubt that that's what Mr. Hinkel was doing when he was writing
11:50 20 these e-mails. They also must prove to you beyond a reasonable
21 doubt that this was not entrapment. You must be convinced
22 beyond a reasonable doubt that Mr. Hinkel was not persuaded by
23 the government agents to commit this crime. You must be
24 convinced beyond a reasonable doubt that Mr. Hinkel was
25 predisposed to commit this crime.

1 So if you're going back and forth over these e-mails
2 when you're deliberating trying to say, "Well, does it mean
3 this, or does it mean that," and you can't decide, Mr. Hinkel
4 is entitled to the benefit of that doubt. That means you must
5 acquit him and find him not guilty.

6 There's a quote when you come up to the courthouse
7 inside in the main lobby there, the grand staircase, by Justice
8 Brandeis. The quote says, "Justice is but truth in action."
9 The truth here, Mr. Hinkel would have never committed this
11:51 10 crime if the government hadn't taken these steps to persuade
11 him to commit the crime. The truth is that what Mr. Hinkel did
12 is not the crime that the government has charged him with. He
13 was not trying to coerce a minor into sexual activity. That
14 truth in action justice here is a verdict of not guilty.

15 THE COURT: Any rebuttal, Ms. Stacey, briefly.

16 MS. PIEMONTE-STACEY: The defendant wasn't
17 predisposed? He sure has an interest in children. Okay.
18 There wasn't child pornography on his computer. He wasn't
19 charged with possession or receipt or anything having to do
11:51 20 with child pornography. The defendant is being charged with
21 trying to get a minor to agree to have sex with him, not
22 whether he actually had sex, not whether he intended to have
23 sex, to get a minor to agree to have sex with him. So look at
24 that evidence.

25 The pictures of the defendant in little girl's

1 clothes, interest in children? The pictures, the animated
2 cartoons where adults are sexualizing children, sexual interest
3 in children? E-mails that ask if Sammy has any idea that he
4 will be licking and kissing her, e-mails where that man says
5 he's just the right size for a baby girl to feel deep inside
6 her. He was predisposed.

7 Ladies and gentlemen, the defendant was coerced? And
8 he couldn't have possibly been interested in sex with Sammy
9 because he didn't talk to Sammy about it. Well, you saw all
11:52 10 the e-mails where he spoke about all the things he was going to
11 do to that child with her mom. And you know why he didn't talk
12 to Sammy about it? Because it's really scary to a 15-year-old,
13 isn't it, to have a man of his age talking about all the
14 bondage and the sex that he's going to have with her. And you
15 know what would have happened if he spoke about that sex with
16 Sammy? She would have said no. In that way, how do you entice
17 someone to have sex with you, because talking can be really
18 scary?

19 Ladies and gentlemen, this is not about whether a
11:53 20 minor's experienced. It's not about whether a minor consented.
21 It's about the defendant's intent, not whether he intended to
22 have sex but whether intended to get that minor to agree to
23 have sex. We ask that you find the defendant guilty.

24 THE COURT: So we don't talk to you for two straight
25 hours, let's take a brief recess, about seven or eight minutes.

1 Then I'll be back to explain the law precisely to you in this
2 specific case. Because what I'm going to say to you now is the
3 law that governs this case, you must still keep your mind
4 suspended and do not start talking about the case among
5 yourselves. We'll recess for about seven or eight minutes.
6 The jury may stand in recess.

7 (Jury exits.)

8 (Recess taken 11:53 a.m. to 12:04 p.m.)

9 THE COURT: We come now to the final step in the case
12:04 10 before the case is handed to you. And it is a tradition in
11 this court that, at the outset of the judge's charge, the jury
12 and I stand and face one another. So I'll ask you to stand up
13 for just a minute. It is a tradition, in this session of the
14 court, that all you members of the jury and the judge stand and
15 face one another. This is not as we stand up to honor our jury
16 system as you come in and out. This is for us to stand and
17 acknowledge that we live under a Constitution and government of
18 law, and the fair and impartial application of that law lies at
19 the very heart and core of our civilization. That is the
12:05 20 responsibility imposed both on you and on me. Please be
21 seated.

22 Now my responsibility is to teach you the law which
23 you must apply in arriving at a fair and a just verdict in this
24 case. And we'll start with the two great principles of law
25 coming straight from our Constitution that govern the trial of

1 any case like this first.

2 Mr. Hinkel started this case innocent, an innocent
3 man. If he is to be convicted, it could only be on the
4 evidence that you have seen it and heard it right here in this
5 courtroom and on nothing else whatsoever. It doesn't count
6 against him in any way that we had a trial, that he is here;
7 doesn't count. He starts innocent. And that basic principle
8 teaches us how trials work. The government bears the burden of
9 proof here, and the burden of proof that they must bear is
12:07 10 proof beyond a reasonable doubt. He need do nothing. You
11 can't start a case, waltz into court and say, "Now explain
12 this, explain that." If that were the law, you see, it would
13 shift that burden of proof. He'd have to do something. He
14 doesn't have to do anything.

15 Now, in this case, he didn't testify, but of course he
16 doesn't have to. Look at all the things that his attorneys on
17 his behalf did. They've asked witnesses, introduced exhibits,
18 made arguments to you, all of which they may do. They have
19 equal right to do that with the government. And what they have
12:08 20 laid before you, consider that. Consider it along with the
21 evidence the government has laid before you. You can draw
22 things against Mr. Hinkel from that evidence. But the point
23 is, by doing that, he assumes no obligation to say or do
24 anything. So to the extent that there's been any silence and
25 some gap left here, if gap there is, you can't hold it against

1 him. He's under no obligation to do anything. The government
2 bears the burden of proof beyond a reasonable doubt.

3 Now, let's talk a little bit you as jurors. I said at
4 the very beginning, and it applies in full force, I emphasize
5 it, that your verdict must be based on the evidence. It must
6 be fair and impartial, a cool reflective sifting of the
7 evidence is the best way I can say it, so that here, in this
8 courtroom, justice may be done.

9 When I'm done, two of your number are going to be
10 designated alternates, and we'll put the alternates down in
11 these chairs. And when you go out, the alternates will go to
12 my little office there next to the jury room. And I say, the
13 alternates won't deliberate. And I tell you now, the
14 alternates, don't you alternates start talking about the case.
15 And you may say, "Well, we've come in" -- yes, the trial has
16 stretched out unavoidably. I thank you again for your care and
17 attention here and your promptness. That's true of all 14 of
18 you now. Now two, we're going to put in another room. Really,
19 I'm talking to everybody now. That emphasizes just how serious
20 this is. Because once in a great while during jury
21 deliberations, something will happen, a juror will take sick,
22 there's some real emergency at home, and I'll lose a juror.
23 Rare, but it happens. And I'll tell you what happens, were
24 that to occur in this case, then I could let that juror go and
25 I could take an alternate and put the alternate in the jury

1 room. And if that were to happen, I would tell you all, "Start
2 all over again," because it isn't 11 of you who are left having
3 talked it all through or talked it through so far and then one
4 new alternate coming in and the rest of you say to the
5 alternate, "Well, here's what we think." No, no, no. That's a
6 new juror. It's 12 different people, and you have to start
7 right from the beginning. So if you are picked as an
8 alternate, believe me, you have contributed as much to this
9 case as the deliberating jurors.

12:11 10 The verdict must be unanimous. That is, all 12 of you
11 deliberating jurors -- there's only one question on the verdict
12 slip. I'm going to go over the verdict slip. There's only one
13 question: Is Mr. Hinkel not guilty or guilty? And you all
14 must agree. You all must agree as to not guilty. You all must
15 agree to guilty. I'm going to go over in detail those specific
16 things that the government has to prove. So remember, you have
17 to follow the law. If I tell you that the government has to
18 prove something, but you don't think that's terribly important
19 in view of other things, you can't just skip over it.
20 Likewise, I will tell you the specific things they have to
21 prove, and you can't add to their burden. You can't say,
22 "Well, I want to know about this or that or the other." The
23 question is, on the specific things I'm going to go over, did
24 they prove those things beyond a reasonable doubt.

25 A word about my function. I'm the judge of the law.

1 You must follow the law the way I explain it to you. This
2 judge's charge is like a law school class, a form of teaching.
3 I am trying to explain the law to you as accurately and
4 precisely as I can in this specific case. You can ask me
5 questions. What you should do is wait until you get out to
6 deliberate. And while you're deliberating, if you're not clear
7 on some point of law -- I can't say anything about the
8 evidence, not my business. Under the Constitution, that's for
9 you. I have nothing to say about it. But if you're not clear
12:13 10 what the law requires, what the law says, by all means write it
11 out. We'll bring you back in here. I will explain it, and I
12 will keep explaining it until you understand it. This will
13 prove to you that, in fact, we work in the afternoon because
14 we're going to be here all the time that you are deliberating.
15 And if it goes into tomorrow, I'll be right here to answer any
16 questions about the law.

17 Now, what I try to do is erect for you a mental
18 framework within which you and you alone decide what the
19 evidence either has proved or has failed to prove. The fact
12:14 20 that I am going to talk about all elements in this case does
21 not mean that I think that anything is proved or not proved. I
22 simply am trying to explain it all to you.

23 Let's talk about the evidence. I'm not going to
24 suggest to you how you react to the evidence in any way. Not
25 my business. But I do want to explain a few things about the

1 evidence. Evidence can be of two types. Direct evidence and
2 circumstantial evidence. Direct evidence is evidence from a
3 witness who says directly, "I saw," "I heard," "I touched,
4 tasted, smelled," evidence that comes directly from that
5 witness's senses.

6 Circumstantial evidence is evidence of a circumstance
7 which, when combined with the other evidence, may lead you to a
8 conclusion. The law makes no difference between direct
9 evidence and circumstantial evidence. A case can be proved on
12:15 10 direct evidence, on circumstantial evidence or any combination
11 of the two. But it must be proved to the jury unanimously
12 beyond a reasonable doubt. This case involves proof of
13 Mr. Hinkel's intent. What did he intend to do? Did he have
14 the requisite criminal intent? There's no way to get inside a
15 person's mind. The law does not require that. The law says
16 that a person intends the natural and probable consequences of
17 what he may do. Example: And my examples have nothing to do
18 with this case. I have a cup of water here. If there was
19 evidence that I took this cup of water and I held it out like
12:16 20 this and then I crushed the cup, the water would all run out
21 there on the witness seat. And if you believed that I did
22 that, you could draw the conclusion that I intended that
23 consequence, that the water run out. How do you judge these
24 witnesses? Remember, the case does not turn on how many
25 witnesses are called, the case does not turn on which side

1 called those witnesses. Those things don't count. What counts
2 is what you make of each witness's testimony. And as to that,
3 you have the broadest possible power as jurors. I charge you
4 that you may believe everything that I allowed a witness to
5 testify to here before you, and equally important, you may
6 disbelieve and disregard everything that a witness testified to
7 just as though that witness had never taken the stand. You
8 decide that.

9 How do you do it? You can use everything you know
10 about these witnesses from watching them both on direct
11 examination and on cross-examination. How did the witnesses
12 answer the questions? What were the witnesses' ability to
13 recall matters, to understand matters? What was the accuracy
14 with which they testified? What does their testimony -- and
15 treat each witness individually. Does it have the ring of
16 truth? Is it believable? Does it fit in with the testimony of
17 other witnesses? Or, does the testimony of other witnesses
18 tend to undercut it, take away from it, make it less
19 believable? Are these witnesses employed by, engaged by,
20 supportive of any party in this litigation? Did that color
21 their testimony, put a spin on anything? All these matters are
22 left to your good judgment as you are reasonable men and women.

23 In addition to the testimony, we have various
24 exhibits. The exhibits which are in evidence will go back with
25 you to the courtroom -- to the jury room. One of them is a

1 video, and we'll have some video player if you want to see that
2 again so you can play it. Those are exhibits. Your power is
3 the same with exhibits as with any other evidence in the case,
4 which is, you can read it, or you can look at it.

5 You can handle certain real evidence, things that are
6 in evidence. And you can draw conclusions from them. I
7 suggest with respect to the particular -- with respect to all
8 items of evidence, your analysis should really be in two steps.
9 Do you believe the thing is what it purports to be? Is this
10 something found in a specific place? Is this something that
11 was sent by someone actually involved in this case? Was this
12 response a response to this other e-mail? You can decide that,
13 see if it is what it purports to be. And if it isn't, pay no
14 attention to it. If you think it is what it purports to be,
15 then how does it fit? What does it tell you about what's going
16 on? More specifically, if you believe that was Mr. Hinkel on
17 certain of these e-mails, what does it tell you about his
18 intent? What was in his mind? Because that's very important
19 here. You can disregard the exhibits; you can believe all the
20 exhibits; draw conclusions from them. You can believe some of
21 them and disbelieve others. You are the jury in this matter.

22 Now, that's the evidence in this case. Now, from that
23 evidence, you're entitled to draw what are known as reasonable
24 inferences, logical deductions, common sense. You don't check
25 your common sense at the door to the jury room. Just the

1 reverse. I charge you to apply your common sense to the
2 evidence that you've heard and seen in this case to the end
3 that justice may be done. But the standard of proof -- don't
4 conflate the two -- isn't some sort of common sense. It's
5 proof beyond a reasonable doubt. So in this case, you're not
6 interested in what may be possibly or even probably was in
7 Mr. Hinkel's mind or even if it was Mr. Hinkel. Is the matter
8 proved to you beyond a reasonable doubt?

9
12:22 10 Let me give you an example, which has nothing to do
11 with the case, that I think illustrates what you can do with
12 reasonable inferences and what you may not do. A witness is
13 testifying. She's on the stand. She testifies she's walking
14 along, and she's walking along a field. To her right is a
15 field of barley. Barley is what they make whiskey out of,
16 green, red tassels, beautiful field of barley. And she notices
17 that through that field of barley, the barley stalks are all
18 laying down. Now, she hasn't seen anything. That's her
19 testimony. And you the jury, you believe that testimony. Now,
12:23 20 from that testimony standing alone, you could infer, it's
21 logical, common sense, you can infer something went through the
22 field, because if it had been a windstorm, it would have
23 knocked all the barley down. But if that's all the testimony
24 you have, you don't know what went through the field, an
25 animal, a human, someone on a dirt bike, big, small? You don't
know from that evidence alone. And you may not guess in this

1 case. You may not speculate. You may not pile inference upon
2 inference. The case must be proved as to each essential
3 element beyond a reasonable doubt.

4 Let me pause for just a moment and mention two things
5 that are not evidence, but it's appropriate that I say them to
6 the attorneys. This case has been well-tried, well-tried for
7 the government, well-tried for Mr. Hinkel. As you are officers
8 of the court, you have ably discharged your duty in seeking out
9 justice here. I don't say that in every case. It's
12:24 10 appropriate. You have seen a well-tried case. Pay no
11 attention to what I just said. And what I mean by that is, if
12 you have liked the attorneys' presentation or you warm to their
13 argument -- now if their argument convinces you or suggests a
14 reasonable doubt, that's what attorneys are supposed to do, go
15 ahead. But what I'm saying is just because you react
16 positively to these attorneys as professionals, that counts for
17 nothing. Equally, if you don't like something an attorney did,
18 the way they presented something, don't hold it against either
19 party. It's unfair. These attorneys are professionals doing
12:25 20 their job.

21 Now equally important, if you think that I think
22 anything at all about this case, anything at all about this
23 case, I most earnestly instruct you to disregard it. And I
24 tell you as near as I know my own heart, I have no opinion
25 about this case, no clue to give you. I do not know how this

1 case will come out, as they say. For me even to form such a
2 view would be improper. I don't talk about that with
3 Ms. Gaudet or any of the court staff. I've got plenty to do
4 here to follow the rules of evidence, so I'm not here to give
5 you any clue. I have no clue to give you. The burden of
6 deciding the case rests upon the jury of the people, which jury
7 you are. I will tell you this, and if this is a bias, I
8 acknowledge it. I believe passionately in the jury system. I
9 believe that you 14 men and women, the 12 deliberating jurors
12:26 10 and the two alternates, that you will do justice in this case
11 and that your verdict, whatever that verdict is, will be just
12 in this case.

13 Now, let's get to it specifically. The verdict slip
14 will read like this: We, the jury, on the charge before us,
15 and the charge is that Mr. Hinkel used a means of interstate
16 commerce to attempt to entice a child to engage in illegal
17 sexual activity. I have to go over each one of those things.

18 First of all, the government has to prove beyond a
19 reasonable doubt that the person who answered this
12:27 20 advertisement and these various e-mails back and forth was
21 Mr. Hinkel, this man, this individual sitting here in court.
22 We're not talking theoretically about a government sting and
23 how the government seeks to enforce the laws. We're talking
24 about this man, his intent, so it's got to be Mr. Hinkel. So
25 first, did Mr. Hinkel use a facility or means of interstate

1 commerce? Now, why do they have to prove that? Well, they
2 have to prove it because we're here in the courts of the United
3 States, not in the courts of our Commonwealth; the United
4 States. It doesn't have to be -- the internet, by the way, is
5 a means of communication in interstate commerce. E-mails don't
6 have to go across state lines from someone in Connecticut to
7 someone in Massachusetts. Just to use it, since it connects to
8 so many different places, that is a facility or means in
9 interstate commerce. So he's got to use that facility.

12:29 10 Mr. Hinkel has got to use a facility or means of interstate
11 commerce. "In an attempt," now because this was a sting
12 operation, there is no imaginary Lisa, there is no imaginary
13 Samantha, but there needn't be. A sting operation, an
14 undercover operation is perfectly lawful, with limits that I'm
15 going to get to, a perfectly appropriate way to enforce the
16 law.

17 But that means that the whatever was legally
18 impossible because there weren't anyone, a mother named Lisa, a
19 minor named Samantha. So was there an attempt? An attempt
12:30 20 means that Mr. Hinkel took some substantial step to accomplish
21 that which the law forbids, that defined, that beyond a
22 reasonable doubt, that he took some substantial step to
23 accomplish what the law forbids. And what does the law forbid?
24 It forbids using the internet to entice a child to engage in
25 illegal sexual activity.

1 Now, there's been some talk in the closings here about
2 coercing the imaginary child. The statute uses the word
3 "coerce," but it also uses the word "entice." The government
4 doesn't have to prove coercion. That has the sensitivity, the
5 nuance of some sort of arm-twisting. No, no. The law doesn't
6 require them to prove that. But it does require that
7 Mr. Hinkel entice the minor. What does "entice" mean?
8 "Entice" means to lure, to persuade, to cause the minor's own
9 independent will to be transformed so that the minor will do
12:32 10 what Mr. Hinkel wanted.

11 Specifically, the government -- and now, in a case
12 like this, where there isn't -- if you believe this all
13 happened, there is not just communication between what the
14 government says is Mr. Hinkel and the imaginary child Samantha.
15 There's communication between what the government says is
16 Mr. Hinkel and the imaginary mother Lisa. And in such a case,
17 understand, you've heard testimony that Mr. Hinkel communicated
18 with undercover officers who were pretending to be the minor's
19 mother. The government does not have to prove that Mr. Hinkel
12:32 20 communicated directly with the pretend minor, Samantha. It is
21 sufficient for the government to prove that Mr. Hinkel
22 attempted to persuade, induce, entice the minor through his
23 communication with an adult intermediary, such as the imaginary
24 parent, Lisa, even though that person was an undercover law
25 enforcement officer. However, where an adult intermediary is

1 involved, Mr. Hinkel's communication with that intermediary,
2 the pretend mother, Lisa, must be aimed at transforming,
3 overcoming the child's independent will, enticing her.

4 In other words, it's not enough for the government to
5 prove that Mr. Hinkel believed he was communicating with
6 someone who could arrange for the minor to be produced for
7 illegal sexual activity or that what he intended was to
8 persuade, entice, induce the pretend parent to put the child
9 out for illegal sexual activity. What's charged here is the
12:34 10 communication, perhaps through the pretend parent, must be an
11 attempt to influence the minor, the imaginary Samantha, to
12 engage in illegal sexual activity even if the attempt is made
13 through the intermediary.

14 Use of the internet in an attempt to entice a child.
15 Under federal law -- and remember, it's always what's in
16 Mr. Hinkel's mind. If you believe this is Mr. Hinkel, it's
17 what's in his mind. The federal law that we're talking about
18 here defines a child as a person under 18 years of age. And
19 then the last part of it is to engage in illegal sexual
12:35 20 activity.

21 As I said at the beginning of the case, Congress was
22 very wise here because the states have different statutes. And
23 so what has got to be in his mind, Mr. Hinkel's mind, is to
24 induce, to entice the minor, the supposed imaginary child,
25 Samantha, to engage in illegal sexual activity, in

1 Massachusetts, which we're talking about, where, if you believe
2 the government's case where things were supposed to happen,
3 it's illegal to engage in sexual intercourse with a child under
4 the age of 16. So it's not enough that it be a child under the
5 law of the United States to make it illegal in Massachusetts,
6 if what he had in mind was sexual intercourse. And the
7 government said something -- that they don't have to prove that
8 what he had in mind was sexual intercourse with the imaginary
9 Samantha. Yes, they do. That's got to be what you think he
12:36 10 was attempting to do. So a child under the age of 16 cannot
11 consent. You're not interested in what was being said about
12 consent. Legally to protect children, a child cannot consent
13 under the age of 16 to engage in sexual intercourse. Now I
14 have to define that at the beginning of the trial. Same
15 definition. Here is how it applies here. Not talking about
16 touching. He's got to have intended to engage in sexual
17 intercourse, that's the sexual activity the government has
18 charged here, with this imaginary minor -- it's an attempt
19 because there never was an imaginary minor -- is under the age
12:37 20 of 16 here's what the law said is sexual intercourse. The
21 penetration, however slight, of a woman's vagina or anus by the
22 penis, the mouth, the tongue rather, a finger or any object
23 wielded by the man, the penetration of the child's mouth by the
24 penis of a man. That in the law is sexual intercourse. That's
25 the illegal sexual activity that is charged, or at least what

1 he was supposed to have had in his mind, under this statute.

2 Using means of interstate commerce to attempt to
3 entice a child into illegal sexual activity. Well, then the
4 word "entrapment" has been used here. Entrapment is a
5 perfectly appropriate limit on government activity. And
6 because the issue of entrapment does present itself, the
7 issue -- I'm not saying anything about it, but the issue
8 presents itself. The government has to prove either one of two
9 additional things. Even if they prove all the rest, if they
12:39 10 don't prove any of those things, you can stop, return a verdict
11 of not guilty. But suppose they prove all of that. Well,
12 there's the issue of entrapment.

13 So let me explain entrapment and be very clear what
14 the government has to prove. They have to prove one of two
15 very different things. A person is entrapped when he is
16 induced or persuaded by law enforcement officers to commit a
17 crime that he was not otherwise ready and willing to commit.
18 The law forbids his conviction in such a case. However, law
19 enforcement agents are permitted to use a variety of methods to
12:40 20 afford an opportunity to a defendant to commit an offense.
21 They can use undercover agents. They can furnish funds. They
22 can use informers. They can -- at least what the government
23 says happened here, they can use false identities. They can
24 set up what in the common parlance is known as a sting
25 operation. That is lawful. But for you to find Mr. Hinkel

1 guilty of this crime, you must be convinced that the government
2 has proven beyond a reasonable doubt that he wasn't entrapped.

3 To show that Mr. Hinkel was not entrapped, the
4 government must establish beyond a reasonable doubt one of the
5 two following things, and I'll take them in order. First, the
6 government has got to prove -- just like everything else,
7 Mr. Hinkel doesn't have to prove anything. The government has
8 to prove it -- that the undercover officers did not persuade or
9 talk Mr. Hinkel into committing the crime. Simply giving
12:41 10 someone an opportunity to commit a crime is not the same as
11 persuading him. But excessive pressure by the undercover
12 officers or an undo appeal can be improper.

13 Now, if the government proves that they did not induce
14 him to commit the crime, you can stop your consideration. But
15 suppose you're not clear whether they've proved beyond a
16 reasonable doubt that they, in fact, induced the commission of
17 the crime. Well, then they have to prove something else. But
18 only then. Even if they induced it, if they prove -- and this
19 they have to prove beyond a reasonable doubt -- that Mr. Hinkel
12:42 20 was ready and willing to commit the crime without any
21 persuasion from the undercover officers, so if he would have
22 done it anyway, without -- he would have attempted to do it, he
23 had the mental intent to commit the crime. Then that's not the
24 propensity, we say, to commit this crime even if the officers
25 hadn't done whatever you find they did that suggests to you

1 that they were inducing him. Now the government has to prove,
2 well, he would have done it anyway, had a propensity to do it.
3 In that circumstance, then they have proved -- either one of
4 those, they've proved that there's no entrapment. But if they
5 can't prove either one of those things, I tell you entrapment
6 at least is an issue in the case, and even if they prove
7 everything else, he cannot be convicted.

8 We've ordered lunch for when?

9 THE CLERK: 12:30.

12:43 10 THE COURT: I want to talk about the mechanics now
11 because I want you to be comfortable. Lunch should be there,
12 cafeteria food. We'll tell the alternates, put the alternates
13 in my lobby. We'll be sure you have lunch. You can take
14 magazines and books in there and the like. What will happen is
15 you'll go out, Ms. Gaudet comes back in here. She goes over
16 the exhibits. She'll bring the exhibits all back to you.

17 Once you go out, you can start deliberation. She'll
18 also bring back to you a verdict slip. That's my fault. I
19 should have the verdict slip. It's very straightforward. It
12:44 20 simply says "Guilty" or "Not Guilty," but it has to be a
21 written verdict slip, and we'll bring that back to you. But
22 you can start just as soon as we send you out.

23 As I've said, if you have any questions about the law,
24 just write them out. We'll bring you back in here. I will
25 answer your questions about the law. We will deliberate or

1 allow you to deliberate close on to 5:00 this afternoon, unless
2 I get some weather advisory, that that would subject us to less
3 than safe conditions. But this is supposed to be a light snow,
4 and I doubt that will happen. I will stop your deliberations
5 shortly before 5:00 p.m. if you have not reached a verdict, and
6 we'll come back tomorrow 9:00 and go right on with your
7 deliberations.

8 We ask you for your verdict. We do not demand it. So
9 when you get in there and you start deliberating among
12:45 10 yourselves, now you are going to talk among yourselves about
11 this case, and there's no longer any need to keep your minds
12 suspended. Now you will be discussing with your fellow jurors,
13 your fellow judges of the facts, that what is the fair and just
14 verdict in this case. I do suggest to you that you probably
15 ought not do this.

16 Well, let me say for starters. Madam forelady, you
17 don't do all the talking and equally you don't keep your mouth
18 shut. You're all equal in there. You ought to set things
19 up -- and that's why it's such a nice conference table. You
12:45 20 can all see each other sitting around it, where each and every
21 one of you can express your views with the other jurors
22 listening and commenting on the views expressed.

23 Jury deliberations are the deliberations of all 12 of
24 you deliberating together, not eight of you talking about the
25 case and four of you looking out at the snow. You're all going

1 to deliberate together. You can use your notes. Remember,
2 your notes -- you now take your notebooks back to the jury
3 room. Your notes are just for you. Don't pass your notes
4 around to your fellow jurors, because they're not evidence of
5 anything. They're what you thought you wanted to take down.
6 They're not evidence. They refresh your memory.

7 The one caution or the one advice I have, don't get
8 back there and take a straw vote right at the beginning and see
9 who is for what. The risk in that is that you may think --
12:46 10 since you're all under oath as jurors, if you do that, you are
11 required by your oath to stick with that view. Now, if you
12 have strong views about any aspect of this case, by all means,
13 stick with that.

14 The verdict must be unanimous. That's not ten of you
15 thinking something and the other two going along so you can go
16 home. Now, I'm bold to say you're not that kind of jury. You
17 slogged through the snow. Every trial day, you've been
18 carefully attentive. No one can go along here. But you can be
19 persuaded. That's what deliberations are. So I charge you,
12:47 20 listen to the views of your fellow jurors. If those views
21 persuade you one way or another, genuinely persuade you, that's
22 fine. That's jury deliberations. When you are ready to return
23 a verdict, the forelady signs it and dates it, and you've got
24 to check it, either "Not Guilty" or "Guilty." And you tell the
25 Court security officer you have a verdict. He'll let

1 Ms. Gaudet know. We'll set things all up in here. Whatever
2 I'm doing in here, they'll all have to wait, and we'll bring
3 you into the courtroom. This is how we take a verdict.

4 So you all get in here and we sit down. And
5 Ms. Gaudet says, "Ladies and gentlemen of the jury, have you
6 reached a unanimous verdict?" And I assume if you're back with
7 a verdict rather than a question, you'll say, "Yes"; and she
8 says, "Pass the verdict slip," it's passed. I'm the first one
9 who looks at it.

12:48 10 Now, I look at it just to see whether it's logical,
11 not what the verdict is. But in this case, it's the most
12 straightforward verdict slip. It's either not guilty or
13 guilty. But if you haven't checked either one, I won't know
14 what to do. If you check both of them, I won't know what to
15 do. But so long as one is checked, I will say, "The verdict is
16 in order. It may be recorded." She'll ask you all to stand
17 up, alternates, too. They'll be in these chairs here.

18 If at that time when you stand, each one of you
19 deliberating jurors is satisfied with the consciousness of your
12:49 20 duty faithfully performed, you will have done what's required
21 of you in this case. The word "verdict" comes from two Latin
22 words. They mean to speak the truth. That is what is asked of
23 you in this case, to speak the truth.

24 Now, I may have left something out, I may have
25 misstated something. And before we let you go out to commence

1 your deliberations, the lawyers get a chance to tell me that
2 now. Counsel?

3 **SIDE BAR:**

4 MS. PIEMONTE-STACEY: Your Honor, just one objection
5 to the part where you said the government said that they didn't
6 have to prove that they intended, that the defendant intended
7 to persuade, induce, or entice to have sex.

8 THE COURT: Right.

9 MS. PIEMONTE-STACEY: In the case of *United States vs.*
10 *Berk*, *United States vs. Dwinells*, underlined just a portion of
11 the government's proposed jury instruction on page 14, that it
12 says that it is not necessary for the government to prove that
13 the defendant actually intended to have sex as a followup to
14 this coercion and enticement, and I believe that the
15 instruction as you gave it indicates that the government had a
16 burden of proving that the defendant intended to have sex.

17 THE COURT: I'm going to stick with my charge. Your
18 rights are saved.

19 MS. FISHER: Your Honor, with regard to that charge,
20 the first thing is I believe you said something to the effect
21 of, when you were talking about sexual activity versus some
22 other kind of activity, what was in his mind. And the problem
23 is it's not what was in his mind. It's what he was attempting
24 to persuade her to do. So we'd ask you to clarify that.

25 THE COURT: I'll say that.

1 MS. FISHER: Okay. My other thing is, I object to
2 your entrapment instruction, and I ask you to give our
3 instruction, 12 specifically, I'd like to say that your
4 instruction didn't really detail the psychological
5 manipulation.

6 THE COURT: I considered it, and your rights are
7 saved, but I'm not going to. Okay.

8 (End sidebar.)

9 THE COURT: Both counsel make what is, in essence, the
10 same point, and I should make this clear. When we're talking
11 about enticing, persuading, inducing the child, Mr. Hinkel has
12 to have -- you've got to be satisfied beyond a reasonable doubt
13 that he used a facility of interstate commerce in an attempt to
14 entice, lure, persuade the imaginary child to engage in
15 unlawful sexual activity. This may be a fine point. But the
16 charge is not that he attempted to actually carry it out. The
17 charge focuses, yes, entirely on his intent; but what makes it
18 illegal is to entice, to lure, to persuade a child, to persuade
19 the child to agree to engage in illegal sexual activity the way
20 I described it. Is the supplementary charge satisfactory to
21 the government?

22 MS. PIEMONTE-STACEY: Yes, your Honor.

23 THE COURT: And saving your rights as to the other
24 point, Ms. Fisher, is that satisfactory?

25 MS. FISHER: Your Honor, I have one other point.

1 THE COURT: Fine.

2 SIDEBAR:

3 MS. FISHER: I just wanted your Honor to instruct them
4 that it was -- that he has to entice, lure, persuade her to
5 engage in, what sexual activity under the statute, which is
6 illegal intercourse --

7 THE COURT: But those words are redundant. I've
8 defined it. I'm satisfied. Your rights are saved.

9 | (End sidebar.)

12:54 10 THE COURT: We'll bring in -- well, first of all, the
11 alternates are as follows. Mr. David Wright, Mr. Edward
12 Henley. Would you come down and take these two chairs.

13 When the jury recesses, you folks can leave. Just
14 hook a right and then into my little office there. We'll get
15 you lunch and whatever else you may need. Don't discuss the
16 case.

17 Very well. Also understand that you can start your
18 deliberations right away. You'll be interrupted only with
19 Ms. Gaudet bringing in the exhibits and then bringing in the
12:55 20 one-page verdict slip as I've instructed you. The jury may
21 retire and commence their deliberations.

22 | THE CLERK: All rise for the jury.

23 (Jury exits.)

1 Well-tried case. Triable case and well-tried. It's a
2 privilege to preside over a case with lawyers so well prepared
3 and such good advocates.

4 Second thing, if I'm going to stash the alternates in
5 my lobby there, I have to go back there and take off the robe.
6 No one has an objection if I do that, as long as I don't talk
7 about the case. I face this in every case, but I stay away
8 from potentially deliberating jurors. But I'll need to be in
9 their presence anyway.

12:56 10 And third, you know my practice. You're free now to
11 go. Tell Ms. Gaudet where you're going to be. Stay here until
12 you've counted out the exhibits, but tell her where you're
13 going to be. If there's a question, I will wait five minutes
14 for you to answer the question but not longer than that. So
15 you've got to be around.

16 Truth to tell, I don't have any hearings this
17 afternoon, so you can use the courtroom as your base. It is my
18 practice when we get to about ten minutes of 5:00 to bring the
19 jury in and give them the appropriate instructions. If they
12:56 20 have to separate, I'm not going to call you for that. Be back
21 here at ten minutes of 5:00. Naturally, if we get a verdict,
22 we'll let you know that. Thank you very much. We're recessed.

23 (Recess taken 12:56 p.m.)

24 (Resumed, 2:37, verdict)

25 THE COURT: Madam forelady, members of the jury, has

1 the jury reached a unanimous verdict?

2 JURY FORELADY: Yes.

3 THE CLERK: Please pass the slip.

4 THE COURT: The verdict is in order. It may be
5 recorded.

6 THE CLERK: Madam forelady, members of the jury,
7 please stand and listen to the verdict as the Court records it.

8 On the charge of using a facility of interstate
9 commerce in an attempt to entice a minor to engage in illegal
02:37 10 sexual activity, we find Paul H. Hinkel guilty.

11 So say you, madam forelady?

12 JURY FORELADY: Yes.

13 THE COURT: So say you, members of the jury?

14 THE JURY: Yes.

15 THE COURT: Please be seated.

16 Ladies and gentlemen, I want to thank you. Not for
17 your verdict. I thank you for your verdict, whatever your
18 verdict is. I thank you most sincerely in the care, attention,
19 promptness, the obvious scrutiny you've given to the case. The
02:37 20 case is now over. I'd like to come and thank you personally,
21 but you'll be free to go, and you have the right to say
22 anything to anyone about anything. You no longer have to not
23 talk to people about the case. I'm not inviting you to talk,
24 but you have that free speech right.

25 In one respect, I caution you. There hasn't been

1 press on this case so far as I can see, but it is not the
2 lawyers or the litigants, they are forbidden by the rules of
3 court from reaching out to you, contacting you in any way, and
4 we'd be right on top of that. That won't happen. But it's
5 possible the press could be in touch with you, and I cannot
6 tell you not to talk to them, but I strongly urge you not to
7 say anything about what went on in the jury room. By your
8 verdict, you have spoken the truth about these matters. Your
9 internal discussions should be private to the 12 of you. We'll
02:38 10 recess, and I'll ask you to wait for just --

11 MS. PEACHY: Your Honor, I'm sorry. May the jury be
12 polled?

13 THE COURT: The jury may be polled. Here's what that
14 means. We need to know individually whether you affirm the
15 verdict that the Court has just recorded. And so I'll just
16 start with the forelady, and then I'll go next juror, next
17 juror, next juror. If you are individually willing to affirm
18 the verdict, you say yes. If it's no or you have some question
19 about it, you say that.

02:39 20 So does the jury affirm the verdict as the court
21 recorded it? Forelady?

22 JURY FORELADY: Yes.

23 THE COURT: Next.

24 THE JUROR: Yes.

25 THE COURT: Next.

1 he'll be remanded, could you go to probation and see if the
2 process could start today so they can begin the Presentence
3 Report?

4 MS. PEACHY: Yes, I will try.

5 THE COURT: Thank you. We'll recess.

6 (Whereupon the proceedings
7 adjourned at 2:40 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER
2

3 I, Kelly Mortellite, Registered Merit Reporter
4 and Certified Realtime Reporter, in and for the United States
5 District Court for the District of Massachusetts, do hereby
6 certify that pursuant to Section 753, Title 28, United States
7 Code that the foregoing is a true and correct transcript of the
8 stenographically reported proceedings held in the
9 above-entitled matter and that the transcript page format is in
10 conformance with the regulations of the Judicial Conference of
11 the United States.

12 Dated this 3rd day of June, 2015.
13

14 /s/ Kelly Mortellite
15

16 Kelly Mortellite, RMR, CRR
17 Official Court Reporter
18
19

10:33 20

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